Government of His Highness the Maharaja of Mysore

LEGISLATIVE DEPARTMENT

THE MYSORE CODE

VOLUME I

CONTAINING THE ACTS INTRODUCED INTO MYSORE BEFORE THE RENDITION AND STILL IN FORCE

WITH

A TABLE OF ACTS AND AN INDEX

THIRD EDITION

BANGALORE:
PRINTED BY THE SUPERINTENDENT AT THE GOVERNMENT PRESS
1943

PREFACE TO THE THIRD EDITION.

It is over twenty years since the Second Edition of this volume was published. Several Acts have since been either replaced or amended. The time has come, therefore, for bringing the volume up-to-date. Amendments effected to the several Acts up to the 1st of September 1943 have been incorporated. This opportunity has been taken to omit all the Acts that have been repealed and to include the Indian Penal Code and the Indian Evidence Act, as in force in Mysore.

BANGALORE,
1*st September* 1943.

C. NARAYANASWAMY NAIDU,
Secretary to Government,
Law Department.

PREFACE TO THE SECOND EDITION.

In bringing the book up-to-date the following Acts have been omitted as they are completely repealed by later Regulations as indicated in the third column of the Table of Acts contained in pages (iv) to (viii) :—

Act	XXVII	of	1860
,,	V	,,	1861
,,	III	,,	1867
,,	XXIII	,,	1870
,,	III	,,	1877
,,	XV	,,	1877
,,	XII	,,	1879

19TH FEBRUARY 1923, J. APPAJI GOWDA,

Bangalore City. *Assistant Secretary to the Government of Mysore, Legislative Dept.*

PREFACE.

This volume, which has been prepared under the orders of the Government of Mysore as the first step towards the issue of a complete Code of the laws in force in Mysore, comprises the Acts introduced during the period of the administration of the State by the British Government on behalf of His Highness the Maharaja and continued in force by the proclamation issued by His late Highness Sri Chamarajendra Wodeyar Bahadur on the 25th March 1881 on assuming charge of the Government. It does not, however, include Acts which have ceased to be in force; nor the following Acts which have been reserved for revision in the near future:—

The Indian Penal Code, Act XLV of 1860, as amended by Acts XXVII of 1870 and XIX of 1872;

The Whipping Act, VI of 1864;

The Court Fees Act, VII of 1870;

The Indian Evidence Act, I of 1872, as amended by Act, XVIII of 1872; and

The Indian Stamp Act, I of 1879.

2. A table of the Acts mentioned in Parts I, II, III and IV of the Schedule to the Instrument of Transfer is prefixed, showing as regards each Act whether it has been repealed or otherwise affected by legislation, and, if not wholly repealed, how it has been disposed of. Where an Act has been amended or partially repealed and afterwards totally repealed, the total repeal only has been entered in the list. And where an Act has been wholly repealed or spent or has expired, the entries relating to it are printed in italics.

3. In reprinting the Acts, the chronological arrangement adopted in the Schedule to the Instrument of Transfer has been followed.

Each Act is preceded by the Notification extending it to Mysore. Except in a few instances where they have become inoperative, the directions contained in such Notifications in regard to the omission or alteration of particular provisions, as well as repeals and amendments enacted by law, have been given effect to in their proper places, references thereto being given in foot notes, or, in the case of repeals or omissions of entire sections, opposite to their marginal notes.

4. The interpretation of the Acts comprised herein is subject to the directions contained in the Notifications printed below, which were issued by the Government of His Highness the Maharaja after the Rendition.

5. A short Index is appended to the volume.

K. S. CHANDRASEKHARA AIYAR, B.A., B.L.,
Assistant Secretary to the Government of Mysore,
Legislative Department.

BANGALORE,
The 9th October 1899.

"Whereas the government of the territories of Mysore "heretofore administered on our behalf by the British "Government has this day been transferred to us by "the proclamation of His Excellency the Viceroy and "Governor-General of India in Council, dated this 25th "day of March 1881, ...

"We do hereby further declare that **all laws and rules "having the force of law now in force in the said territories "shall continue to be in force in the said territories."**

—*Extract from Proclamation issued by His Highness Maharaja Sri Chamarajendra Wodeyar Bahadur.*

(Vide *para 4 of Preface.*)

NOTIFICATIONS BY THE GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

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(1) *Notification No.* 24, *dated the* 28*th April* 1881.

In all Notifications and Rules having the force of law in Mysore where the words "Judicial Commissioner" and "Court of the Judicial Commissioner" now occur, the words "Chief Judge" and "Chief Court" shall henceforth be read.

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(2) *Notification No.* 153, *dated the* 2*nd September* 1881.

In all Acts, Rules and Regulations now in force in Mysore, the expressions "The Government of India", "The Governor-General of India in Council" and "Local Government" shall denote "The Government of His Highness the Maharaja of Mysore."

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(3) *Notification No.* 92, *dated the* 31*st July* 1885.

His Highness the Maharaja is pleased to point out that the Rules of Interpretation laid down in Notification No. 153, dated 2nd September 1881, published at page 124 of the *Mysore Gazette* of 3rd September 1881, do not apply to those parts of the Acts of the British Legislature which apply in terms to British subjects in the dominions of Princes and States in India, in alliance with Her Majesty, and which, for the reason and to that extent, have the force of law in Mysore by virtue of the authority of the British Legislature.

2. His Highness is further pleased to direct that the above-mentioned Notification No. 153, dated 2nd September 1881, shall not apply to the General Clauses Act (I of 1868,* or to Section 230 of the Indian Penal Code as amended, by Act XIX of 1872, or to the Indian Coinage Act XXIII of 1870.)

*Since repealed by Regulation III of 1899.

Table of Acts mentioned in Parts, I, II, III and IV of the Schedule to the Instrument of Transfer.

PART I.—General Acts.

Number and year	Title or short title	Whether repealed or otherwise affected by legislation	How disposed of
1	2	3	4
[a] XIX of 1850.	Concerning the binding of Apprentices (in part.)	Repealed in part, before the extension of the Act to Mysore, by Acts XIV of 1870 and XVI of 1874.	2—10
XLV of 1860 ...	The Indian Penal Code.	Amended up-to-date	31—189
[b] X of 1865 ...	The Indian Succession Act, 1865.	Repealed in part by Acts VII of 1870 and XV of 1877; also before the extension of the present Act to Mysore, by Act XXIV of 1867. Amended by Act I of 1922 and Act XVII of 1938.	225—331
V of 1866 ...	To provide a summary procedure on Bills of Exchange, and to amend in certain respects the Commercial Law of British India.	Repealed in part by Act IX of 1872 and by Act X of 1877 as amended by Act XII of 1879, section 99.	332—333
XXI of 1866 ...	The Native Converts' Marriage Dissolution Act, 1866.	Repealed in part by Act VII of 1870; also before the extension of the Act to Mysore, by Act XVI of 1874.	334—343
XXV of 1867 ...	For the regulation of printing presses and newspapers, for the preservation of copies of books printed in British India, and for the registration of such books.	Amended by Act I of 1894, certain words in section 18 repealed by Act XI of 1933.	345—356
XXVI of 1870 ...	*The Prisons Act, 1870 (in part).*	*Repealed in part, before the extension of the Act to Mysore by Acts XII of 1873 and XVI of 1874; and amended by Act XIV of 1878. Completely repealed by Act XLI of 1943.*	357—376
I 1871 ...	The Cattle Trespass Act, 1871.	Amended by Act VIII of 1892 and Act IV of 1939.	377—389

[a] Applies only to European and Eurasian children.

[b] Does not apply to Native Christians.

Number and year	Title or short title	Whether repealed or otherwise affected by legislation	How disposed of
1	2	3	4
XXIII of 1871 ...	The Pensions Act, 1871; (in part).	.....	390—393
I of 1872 ...	The Indian Evidence Act, 1872.	Amended up-to-date	407—477
IX of 1872 ...	The Indian Contract Act, 1872.	Repealed in part by Act I of 1877. Amended by Acts VI of 1892 and IV of 1912. Chapter VII was repealed by Act V of 1932. Amended by Act VI of 1932. Some portions were repealed by Act VI of 1936.	477—544
[a] XV of 1872...	The Indian Christian Marriage Act, 1872; (in part),	Certain words in section 2 were repealed by Act III of 1900.	553—575
V of 1873 ...	The Government Savings Banks Act, 1873.	Amended by Act II of 1911 and Act I of 1930.	577—584
X of 1873 ..	The Indian Oaths Act, 1873.	Repealed in part, before the extension of the Act to Mysore, by Acts XII of 1873 and XII of 1876.	589—592
I of 1877 ...	The Specific Relief Act, 1877; (in part).	Amended by Act XVII of 1938.	593—628
I of 1878 ...	The Opium Act, 1878 (in part).	.....	629—640
I o 1873 ...	To prevent the indiscriminate destruction of wild elephants.	.....	641—642
VIII of 1878 ...	The Madras Coffee Stealing Prevention Act, 1878.	.....	643—646

[a] Applies so far as regards marriages between persons, one of whom is a Native Christian subject of Mysore, and neither of whom is a Christian British subject.

THE ACTS

INTRODUCED INTO MYSORE

BEFORE THE RENDITION.

ACT XX OF 1847.

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*Repealed in part by Acts IX of 1871 and I of 1879; also, before the extension of the present Act to Mysore, by Act XVII of 1862. So much as was not already repealed by earlier Acts was repealed by Act XI of 1933.

ACT XIX of 1850.

Notification by the Government of India, Foreign Department No. 121, *Judicial, dated Simla, the* 12*th August* 1875.

The Governor-General in Council is pleased to extend to Mysore Act XIX of 1850 (concerning the Binding of Apprentices), subject to the following modifications (namely):—

Omit Sections 5, 6, 7, 22 and 23.

To Section 3 add "or required to find security for good behaviour."

In Section 10, omit the passage relating to apprentices bound to sea-service and the words "or Registering Officer."

In Section 11, for "8" read "9" and omit the words "or Registering Officer."

In Sections 12 and 20, omit the words "or Registering Officer."

In Section 13, omit the words "in the said territories."

In Section 15, omit the words "or on board the vessel to which he belongs."

In Section 18, omit the words referring to causes of complaint arising on boardship.

In Sections 19, 20 and 21 and in Schedules A & B, for "executors or administrators" and "executors and administrators," read "legal representatives."

In Section 24, omit the words "without the said towns and island."

In Schedule A, omit the words "and seals" and the letters "L. S."

The operation in Mysore of Act XIX of 1850, as above modified, is limited to European and Eurasian children.

ACT XIX OF 1850.

(PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL ON THE 11TH APRIL 1850.)

Concerning the Binding of Apprentices.

Preamble. For better enabling children, and especially orphans and poor children brought up by public charity, to learn trades, crafts or employments, by which, when they come to full age, they may gain a livelihood; it is enacted as follows:—

Apprenticing of child between 10 and 18 years old. **1.** Any child, above the age of ten, and under the age of eighteen years, may be bound apprentice by his or her father or guardian to learn any fit trade, craft or employment, for such term as is set forth in the contract of apprenticeship, not exceeding seven years, so that it be not prolonged beyond the time when such child shall be of the full age of twenty-one years, or, in the case of a female, beyond the time of her marriage.

Evidence of age in questions as to right to service. **2.** The age set forth in the contracts shall be evidence of the age of the child, in all questions which arise as to the right of the master to the continuance of the service.

Powers of Magistrate or Justice acting for orphans, etc. **3.** Any Magistrate or Justice of the Peace may act with all the powers of a guardian under this Act, on behalf of any orphan, or poor child abandoned by its parents, or of any child convicted before him, or any other Magistrate, of vagrancy, or the commission of any petty offence, [a] or required to find security for good behaviour [a].

Apprenticing of child brought up by public charity. **4.** An orphan or poor child, brought up by any public charity, may be bound apprentice by the Governors, Directors, or Managers thereof, as his or her guardians for this purpose.

5. (*Apprenticing of such boy in sea service.*)

6. (*Apprenticing of such boy in ship of the East India Company.*)

7. (*Who to be agent of master of apprentice serving in ship.*)

Omitted as directed by Notification No. 121—J., dated the 12th August 1875.

[a-a] These words have been added as directed by Notification No. 121—J., dated the 12th August 1875.

Form and contents of contract of apprenticeship.

8. Every contract of apprenticeship shall be in writing, according to the form given in the Schedule (A) annexed to this Act, or to the like effect, which shall set forth the conditions agreed upon particularly specifying the age of the apprentice, the term for which he is bound, and what he is to be taught.

Signature to contract.

9. Every such contract shall be signed by the person to whom the apprentice is bound, and by the person by whom he is bound, and by the apprentice, when he is of the age of fourteen years or more at the time of binding; but, when the apprentice is bound by the Governors, Directors or Managers of a Public Charity, the signature of two of them, or of their Secretary or Officer, shall be sufficient on behalf of the persons binding the apprentice.

Contract not valid unless executed as prescribed and deposited.

10. No such contract shall be valid unless it be executed in the manner aforesaid, nor until it has been deposited in the office of the Chief Magistrate of the place or district where it has been executed [a]; and the person in whose office any such contract is deposited shall give to each of the parties a copy thereof, certified under his hand, which certified copies shall be received as evidence of the contract, without formal proof of the handwriting of the Magistrate [b].

Copies to be given to parties.

Alteration of terms of service and termination of contract.

11. The terms of service may be changed at any time during the apprenticeship, or the contract may be determined, with the consent of both parties to the contract or their personal representatives, and with the consent of the apprentice, if he is above the age of fourteen years: Provided that the changes agreed to or the termination of the contract shall be expressed in writing on the original contract with the signature of the proper parties according to Section 9 [c] of this Act; and the Magistrate [b] shall thereupon make under his hand corresponding endorsements on the office copies, which shall be brought to him at the same time for that purpose.

Assignment of apprentice to new master.

12. The master of any apprentice bound under this Act may, with the consent of the person by whom he was bound, and with the consent of the apprentice, if he is above the age of fourteen years, assign such apprentice to any

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[a] and [b] Certain words have been omitted as directed by Notification No. 121—J., dated the 12th August 1875.

[c] The figure "9" has been substituted for the figure "8" as directed by Notification No. 121—J., dated the 12th August 1875.

other person, who is willing to take him for the residue of his apprenticeship, and subject to the conditions thereof: Provided that such person shall, by endorsement under his own hand on the contract, declare his acceptance of such apprentice, and acknowledge himself bound by the agreements and covenants therein mentioned, to be performed on the part of the master, and that the consent of the other parties aforesaid shall be expressed in writing on the same, and signed by them respectively: And every such assignment shall be certified on the office copies of the contract under the hand of the Magistrate [a] according to the form given in Schedule (B) annexed to this Act.

Powers of Magistrate in case of complaint by apprentice against master.

13. Upon complaint made to any Magistrate [b] by or on behalf of any apprentice bound under this Act, of refusal or neglect to provide for him, or to teach him according to the contract of apprenticeship, or of cruelty, or other ill-treatment by his master, or by the agent under whom he shall have been placed by his master, the Magistrate may summon the master or his agent, as the case may be, if he shall be within his jurisdiction, to appear before him at a reasonable time, to be stated in the summons, to answer the complaint;

and at such time, whether the master or his agent be present or not (service of the summons being proved), may examine into the matter of the complaint; and, upon proof thereof, may cancel the contract of apprenticeship, and assess upon the offender, whether he shall be the master or his agent, a reasonable sum for behoof of the apprentice, not exceeding four times the amount of the premium paid upon the binding, or if no premium, or a less premium than fifty rupees was paid, not exceeding two hundred rupees;

and, if the offender shall not pay the sum so assessed, may levy the same by distress and sale of his goods and chattels, and, if the offender shall not be the master but his agent, by distress and sale of the goods and chattels of the master also.

Power of master or his agent to chastise apprentice.

14. No contract of apprenticeship shall be cancelled, nor shall any master or his agent be liable to any criminal proceeding, on account of such moderate chastisement for misbehaviour, given to any apprentice by his master or the

[a] and [b] Certain words have been omitted as directed by Notification No. 121—J., dated the 12th August 1875.

agent of his master, as may lawfully be given by a father to his child; and the provision for enabling the contract of apprenticeship to be cancelled shall not bar any criminal proceeding against any master or his agent for an assault or other offence committed against his apprentice, for which he would be liable to be punished, had it been against his child, whether or not any proceedings be taken for cancelling the contract of apprenticeship.

Power of Magistrate in case of complaint by master against apprentice.

15. Upon complaint made to any Magistrate, by or on behalf of the master of any apprentice bound to him under this Act, of any ill-behaviour of such apprentice, or if such apprentice shall have absconded, the Magistrate may issue his warrant for apprehending such apprentice, and may hear and determine the complaint, and punish the offender by an order for keeping the offender, if a boy, in confinement in any debtor's prison or other suitable place not being a criminal jail, for any time not exceeding one month, of which one week may be in a solitary confinement, during which time such allowance shall be made for his subsistence by the master or his agent as the Magistrate shall order; and, if the offender be a boy of not more than fourteen years of age, may order him to be privately whipped: or, if the offender be a girl, or in the case of any boy, the Magistrate deem any such punishment unfit, he may pass an order empowering the master of the apprentice or his agent to keep the offender in close confinement in his own house, [a] upon bread and water, or such other plain food as may be given without injury to the health of the apprentice, for a period not exceeding one month.

Cancelment of contract for misconduct of apprentice.

16. Upon complaint of wilful and repeated ill-behaviour on the part of the apprentice, and on the demand of the master, the Magistrate may order the contract of apprenticeship to be cancelled whether or not the charge is proved; but only with the consent of the apprentice and of his father or guardian, if the charge is not proved; and such cancelling shall be with or without refund of the whole or part of any premium that may have been paid to the master on binding such apprentice, as the Magistrate seems fit on consideration of the case; and all sums so refunded shall be applied under the direction of the Magistrate for behoof of the apprentice.

[a] Certain words have been omitted as directed by Notification No. 121—J., dated the 12th August 1875.

Sections 17—21.

Appropriation of sum recovered for apprentice on cancelment of contract.

17. The Magistrate may order any sum recovered for behoof of the apprentice on cancelling the contract to be either laid out in binding him to another master, or otherwise for his benefit, or to be paid to the person by whom any premium was paid when he was bound apprentice.

Limitation of complaint of master against apprentice.

18. No Magistrate shall entertain a complaint on the part of a master against an apprentice under this Act, unless it be brought within one month after the cause of complaint arose; [a] and no Magistrate shall entertain a complaint on the part of an apprentice against his master or the age of his master under this Act unless it be brought within three months after the cause of complaint arose. [a]

of apprentice against master.

Effect of death of master during apprenticeship.

19. If the master of any apprentice shall die before the end of the apprenticeship, the contract of apprenticeship shall be thereby determined; and a proportionate part, corresponding to the unexpired portion of the term, of any premium, which shall have been paid to such master on the binding of the apprentice to him, shall be returned by the [b] legal representatives [b] out of the estate of the deceased to the person or persons who shall have paid the same; unless the [b] legal representatives [b] of the deceased master shall continue the business in which such apprentice shall have been employed, and shall, within three months from the death of the late master, make offer in writing to keep the apprentice on the terms of the original contract; in which case the estate of the deceased shall be discharged from all liabilities on account of such premium.

Offer by representative of master to continue apprenticeship.

Offer to be certified on original contract and copies.

20. If such offer to keep the apprentice shall be made as aforesaid, the same shall be fully expressed and certified by the [b] legal representatives [b] on the original contract of apprenticeship, and also on the office copies thereof, by the Magistrate [c]; and the apprentice shall be bound to the [b] legal representatives [b] so keeping him for the remaining term of his apprenticeship.

Maintenance of apprentice whose master dies.

21. Any apprentice bound under this Act, whose master shall die during the apprenticeship, shall be entitled to maintenance, for three months from and after the death of his master, out of the assets left by him: Provided that

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[a] Certain words have been omitted as directed by Notification No. 121—J., dated the 12th August 1875.

[b-b] These words have been substituted as directed by Notification No. 121—J., dated the 12th August 1875.

[c] The words "or Registering Officer" have been omitted as directed by Notification No. 121—J., dated the 12th August 1875.

Apprentice to continue to serve.

during such three months such apprentice shall continue to live with, and serve as an apprentice, the [a] legal representatives [a] of such master, or such person as they shall appoint.

22. (*Effect of insolvency of master during apprenticeship.*) *Omitted as directed by Notification No.* 121—*J., dated the* 12*th August* 1875.

23. (*Persons amenable to jurisdiction of Magistrates' Courts.*) *Omitted as directed by Notification No.* 121—*J., dated the* 12*th August* 1875.

Appeal from orders of Magistrates.

24. An appeal shall lie from any order passed by any Magistrate [b] to the Court of Session to which such Magistrate is subordinate, provided the appeal is made within one month from the date of the order.

Interpretation of terms.

25. In this Act the words "master," "owne," "person" and the pronoun "he" shall be understood to include several persons as well as one person, and females as well as males, and bodies corporate as well as individuals, unless there is something in the context repugnant to such construction.

SCHEDULE A.

Form of Agreement.

This Agreement made the day of in the year between A. B. of and C. D. of witnesseth that the said A. B. doth this day bind E. F. a boy (or girl) of the age of years completed, son (or daughter) of the said A. B. (or otherwise describing the relation in which A.B. and E.F. stand), to dwell with and serve the said C.D. as an apprentice, from this day forth for years (in the case of a girl add, or until the time of her marriage, which shall first happen), during all which

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[a-a] These words have been substituted as directed by Notification No. 121—J., dated the 12th August 1875.

[b] Certain words have been omitted as directed by Notification No. 121—J., dated the 12th August 1875.

Schedule A and B.

term the said apprentice shall duly and faithfully serve the said C. D. according to his (or her) skill and ability in all lawful business, and demean and behave himself (or herself) honestly, orderly and obediently, in all things towards the said C. D. and his (or her) family. And the said C. D. for himself (or herself) and his (or her) [a] legal representatives, [a] in consideration [of the premium or sum of paid by the said A. B. to the said C. D. the receipt whereof the said C. D. hereby acknowledges, and] of the faithful service of the said E. F., doth covenant and agree with the said A. B., his (or her) [a] legal representatives, [a] that he (or she) will teach or cause to be taught to the said E. F. in the best way and manner that he (or she) can, the trade (craft or employment) of a during the said term; and will also, during the said term, find and allow unto the said apprentice good, wholesome and sufficient food, clothes, lodging, washing and all other things necessary, fit and reasonable for an apprentice: (and further, *here insert any special covenants*).

If there is no premium, the words between brackets may be omitted.

In witness whereof the parties have hereunto set their hands [b] the day and year above written.

A. B. [b]
C. D. [b]

SCHEDULE B.

Form of Order of Assignment.

(To be endorsed on the Agreement.)

Be it known to all men that on the day of in the year personally appeared before G. H., Magistrate of C.D., of with E. F., his (or her) apprentice, and J. K., of , and desired that the agreement of apprenticeship, whereby the said E.F., was bound to the said C. D., might be assigned and made over to the said J. K., and the said G. H., having satisfied himself, by personal examination of the said E.F., and by other lawful ways and

[a-a] These words have been substituted as directed by Notification No. 121—J,, dated the 12th August 1875.

[b] Certain words and letters have been omitted as directed by Notification No. 121—J., dated the 12th August 1875.

Schedule B.

means, that such assignment is for the benefit of the said E. F. and is made with the consent of [the said E.F. and of] all persons whose consent thereunto by a law is required, doth allow such assignment; and the contract of apprenticeship whereby the said E. F. was on the day of in the year bound to the said C.D. as an apprentice to learn the trade (craft or employment of a shall henceforth endure unto, the end of the said term, as if the said J. K. had been originally party to the said deed, and had executed the same, in the place and stead of the said C.D., and shall be bound, for himself (or herself), his (or her) [a] legal representatives, [a] to fulfil the covenants by the said C.D. to be performed, and the said E.F. shall henceforth be bound unto the said J.K. in like manner as he (or she) was by the said agreement bound unto the said C.D.

If E. F. is not above the age of fourteen years, the words between brackets may be omitted.

C. D. E. F. J. K.

In witness whereof the said C. D., E. F. and J. K. have hereunto set their hands before me the day and year above written.

G. H.,
Magistrate.

[a-a] These words have been substituted as directed by Notification No. 121—J., dated the 12th August 1875.

THE INDIAN PENAL CODE

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THE INDIAN PENAL CODE.

ACT No. XLV OF 1860.

[As extended to Mysore by letter of the Government of India, Foreign Department, Judicial No. 508, dated 9th December 1862, and amended by Acts, XXVII of 1870, XIX of 1872 and X of 1873, by the Code of Criminal Procedure as introduced into Mysore by Act I of 1886 and amended by Acts I of 1892, II of 1894, IV of 1894, I of 1904, II of 1922, V of 1925, VIII of 1928, VII of 1930 and IX of 1937.]

CHAPTER I.

TITLE OF THE CODE.

Preamble.

WHEREAS it is expedient to provide a general Penal Code for British India; it is enacted as follows:—

Title and extent of operation of the Code.

1. This Act shall be called THE INDIAN PENAL CODE, and shall take effect * throughout the whole of the Territories which are or may become vested in Her Majesty by the Statute 21 and 22 Victoria, Chapter 106, entitled "An Act for the better Government of India," except the Settlement of Prince of Wales' Island, Singapore and Malacca.

Punishment of offence committed within the said Territories.

2. Every person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which he shall be guilty within the said Territories. †

Punishment of offences committed beyond, but which by law may be tried within the Territories.

3. Any person liable, by any law passed by the Governor-General of India in Council, to be tried for an offence committed beyond the limits of the said territories, shall be dealt with according to the provisions of this Code for any act committed beyond the said territories, in the

* The words and figures "on and from the first day of May 1861" were repealed by Act I of 1904, section 2.

† The words and figures "on or after the said first day of May 1861" were repealed by Act I of 1904, section 2.

same manner as if such act had been committed within the said Territories.

Extension of Code to extra territorial offences.

*4. The provisions of this Code apply also to any offence committed by any subject of His Highness the Maharaja in any place without and beyond Mysore.

Explanation.—In this section "offence" includes every act committed outside Mysore which, if committed in Mysore, would be punishable under this Code.

Illustrations.

(*a*) A, a coolie, who is a subject of His Highness the Maharaja, commits a murder in Uganda. He can be tried and convicted of murder in any place in Mysore in which he may be found.

(*b*) D, a subject of His Highness the Maharaja living in Indore, instigates E to commit a murder in Mysore. D is guilty of abetting murder.

Certain laws not to be affected by this Act.

5. Nothing in this Act is intended to repeal, vary, suspend or affect any of the provisions of the Statute 3 and 4 William IV, Chapter 85, or of any Act of Parliament passed after that Statute in any wise affecting the East India Company, or the said Territories, or the inhabitants thereof; or any of the provisions of any Act for punishing mutiny and desertion of Officers and Soldiers, in the service of Her Majesty or of the East India Company, or of any Act for the Government of the Indian Navy, or of any special or local law.

CHAPTER II.

GENERAL EXPLANATIONS.

Definitions in the Code to be understood subject to exceptions.

6. Throughout this Code every definition of an offence, every penal provision, and every illustration of every such definition or penal provision, shall be understood subject to the exceptions contained in the Chapter entitled "General Exceptions", though those exceptions are not repeated in such definition, penal provision or illustration.

* The original section 4 was repealed and this section substituted by Act I of 1904, section 3.

Sections 7-15.

Illustrations.

(*a*) The sections in this Code, which contain definitions of offences, do not express that a child under seven years of age cannot commit such offences; but the definitions are to be understood subject to the general exception which provides that nothing shall be an offence which is done by a child under seven years of age.

(*b*) A, a Police Officer, without warrant, apprehends Z who has committed murder. Here A is not guilty of the offence of wrongful confinement; for he was bound by law to apprehend Z, and therefore the case falls within the general exception which provides that "nothing is an offence which is done by a person who is bound by law to do it".

Sense of expression once explained.

7. Every expression which is explained in any part of this Code, is used in every part of this Code in conformity with the explanation.

Gender.

8. The pronoun "he" and its derivatives are used of any person, whether male or female.

Number.

9. Unless the contrary appears from the context, words importing the singular number include the plural number, and words importing the plural number include the singular number.

"Man." "Woman."

10. The word "man" denotes a male human being of any age; the word "woman" denotes a female human being of any age.

"Person."

11. The word "person" includes any Company or Association, or body of persons, whether incorporated or not.

"Public."

12. The word "public" includes any class of the public or any community.

"Queen."

13. The word "Queen" denotes the Sovereign for the time being of the United Kingdom of Great Britain and Ireland.

"Servant of the Queen"

14. The words "servant of the Queen" denote all officers or servants continued, appointed, or employed in India by or under the authority of the said Statute 21 and 22 Victoria, Chapter 106, entitled "An Act for the better Government of India," or by or under the authority of the Government of India, or any Government.

"British India."

15. The words "British India" denote the territories which are or may become vested in Her Majesty by

Sections 16-20.

the said Statute 21 and 22 Victoria, Chapter 106, entitled "An Act for the better Government of India," except the Settlement of Prince of Wales' Island, Singapore and Malacca.

"Government of India."

16. The words "Government of India" denote the Governor-General of India in Council, or, during the absence of the Governor-General of India from his Council, the President in Council, or the Governor-General of India alone as regards the powers which may be lawfully exercised by them or him respectively.

"Government."

17. The word "Government" denotes the person or persons authorised by law to administer executive Government in any part of British India.

"Presidency."

18. The word "Presidency" denotes the territories subject to the Government of a Presidency.

"Judge."

19. The word "Judge" denotes not only every person who is officially designated as a Judge, but also every person who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or who is one of a body of persons, which body of persons is empowered by law to give such a judgment.

Illustrations.

(*a*) A collector exercising jurisdiction in a suit under Act X of 1859 is a Judge.

(*b*) A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment, with or without appeal, is a Judge.

(*c*) A member of a panchayet which has power under Regulation VII, 1816, of the Madras Code, to try and determine suits, is a Judge.

(*d*) A Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another Court, is not a Judge.

"Court of Justice."

20. The words "Court of Justice," denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.

Section 21.

Illustration.

A panchayet acting under Regulation VII, 1816, of the Madras Code, having power to try and determine suits, is a Court of Justice.

"Public Servant."

21. The words "Public Servant" denote a person falling under any of the descriptions hereinafter following, namely:—

First.—Every Covenanted Servant of the Queen;

Second.—Every Commissioned Officer in the Military or Naval Forces of the Queen while serving under the Government of India or any Government;

Third.—Every Judge.

Fourth.—Every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court; and every person specially authorized by a Court of Justice to perform any or such duties;

Fifth.—Every Juryman, Assessor, or member of a panchayet assisting a Court of Justice or public servant;

Sixth.—Every Arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority;

Seventh.—Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

Eighth.—Every officer of Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

Ninth.—Every officer whose duty it is, as such officer to take, receive, keep or expend any property on behalf of Government, or to make any survey assessment or contract on behalf of Government, or to execute any revenue process, or to investigate, or to report, on any matter affecting the pecuniary interests of Government, or to make, authenticate, or keep any document relating to the pecuniary interests of Government, or to prevent the infraction of any law for the protection of the pecuniary

Section 21.

interests of Government, and every officer in the service or pay of Government or remunerated by fees or commission for the performance of any public duty;

Tenth.—Every officer whose duty it is, as such officer to take, receive, keep or expend any property, to make any survey or assessment, or to levy any rate or tax for any secular common purpose of any village, town, or district, or to make, authenticate, or keep any document for the ascertaining of the rights of the people of any village, town or district.

**Eleventh.*—Every officer employed in any postal or telegraph service established or maintained by the British Indian Government within the territories of Mysore.

†*Twelfth.*—Every person employed in the household of His Highness the Maharaja of Mysore whose duty it is to take, receive, keep or expend any property, or to make any contract, on behalf of the Palace, or to make, authenticate or keep any document relating to the pecuniary interests of the Palace, or to preserve order or to protect person or property in any place belonging to or intended for the use or occupation of His Highness the Maharaja.

‡‡*Thirteenth.*—Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election.

Illustration.

A Municipal Commissioner is a public servant.

Explanation 1.—Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

Explanation 2.—Wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

§*Explanation* 3.—The word "election" denotes an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of selection to which he is by, or under, any law prescribed as by election.

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* This clause was added by Act II of 1894.
† This clause was added by Act VII of 1930.
‡ This clause was inserted by Act I of 1941.
§ This clause was added by Act I of 1941.

Sections 22-28.

"Moveable property."

22. The words "moveable property" are intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth.

"Wrongful gain."

23. "Wrongful gain" is gain by unlawful means of property to which the person gaining is not legally entitled.

"Wrongful loss."

"Wrongful loss" is the loss by unlawful means of property to which the person losing it is legally entitled.

"Wrongful gain" includes wrongful retention of property. "Wrongful loss" includes the being wrongfully kept out of property.

A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.

"Dishonestly."

24. Whoever does anything with the intention of causing wrongful gain to one person, or wrongful loss to another person, is said to do that thing "dishonestly".

"Fraudulently."

25. A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.

"Reason to believe."

26. A person is said to have "reason to believe" a thing if he has sufficient cause to believe that thing but not otherwise.

Property in possession of wife, clerk, or servant.

27. When property is in the possession of a person's wife, clerk, or servant, on account of that person, it is in that person's possession within the meaning of this Code.

Explanation.—A person employed temporarily or on a particular occasion in the capacity of a clerk or servant is a clerk or servant within the meaning of this section.

"Counterfeit."

28. A person is said to "counterfeit" who causes one thing to resemble another thing, intending by means of that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised.

**Explanation* 1.—It is not essential to counterfeiting that the imitation should be exact.

**Explanation* 2.—When a person causes one thing to resemble another thing and the resemblance is such that a person might be deceived thereby, it shall be presumed, until the contrary is proved, that the person is so causing the one thing to resemble the other thing intended by means of that resemblance to practise deception or knew it to be likely that deception would thereby be practised.

* These explanations were substituted for the original explanations by Act I of 1904, section 4.

Sections 29-30.

"Document." **29.** The word "document" denotes any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.

Explanation 1.—It is immaterial by what means or upon what substance the letters, figures, or marks are formed, or whether the evidence is intended for, or may be used in a Court of Justice, or not.

Illustrations.

A writing expressing the terms of a contract, which may be used as evidence of the contract, is a document.

A cheque upon a banker is a document.

A power of attorney is a document.

A map or plan which is intended to be used, or which may be used as evidence, is a document.

A writing containing directions or instructions is a document.

Explanation 2.—Whatever is expressed by means of letters figures or marks as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures or marks within the meaning of this section, although the same may not be actually expressed.

Illustration.

A writes his name on the back of a bill of exchange payable to his order. The meaning of the endorsement, as explained by mercantile usage, is that the bill is to be paid to the holder. The endorsement is a document, and must be construed in the same manner as if the words "pay to the holder" or words to that effect had been written over the signature.

"Valuable security." **30.** The words "valuable security" denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right.

Illustration.

A writes his name on the back of a bill of exchange. As the effect of this endorsement is to transfer the right

Sections 31-37.

to the bill to any person who may become the lawful holder of it, the endorsement is a "valuable security."

"A Will."

31. The words "a will" denote any testamentary document.

Words referring to acts include illegal omissions.

32. In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions.

"Act." "Omission."

33. The word "act" denotes as well a series of acts as a single act; the word "omission" denotes as well a series of omissions as a single omission.

Acts done by several persons in furtherance of common intention.

34. When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

When such an act is criminal by reason of its being done with a criminal knowledge or intention.

35. Whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention.

Effect caused partly by act and partly by omission.

36. Wherever the causing of a certain effect or an attempt to cause that effect, by an act or by an omission, is an offence, it is to be understood that the causing of that effect partly by an act and partly by an omission is the same offence.

Illustration.

A intentionally causes Z's death, partly by illegally omitting to give Z food and partly by beating Z. A has committed murder.

Co-operation by doing one of several acts constituting an offence.

37. When an offence is committed by means of several acts, whoever intentionally co-operates, in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence.

Illustrations.

(*a*) A and B agree to murder Z by severally and at different times giving him small doses of poison. A and B administer the poison according to the agreement with intent to murder Z. Z dies from the effects of the

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* This section was substituted for the original section by the Indian Penal Code Amendment Act, 1870 (27 of 1870) as applied to Mysore by the Government of India Foreign Department Notification No. 41, dated 10th March 1871.

several doses of poison so administered to him. Here A and B intentionally co-operate in the commission of murder and as each of them does an act by which the death is caused, they are both guilty of the offence though their acts are separate.

(*b*) A and B are joint jailors, and as such, have the charge of Z, a prisoner, alternately for six hours at a time. A and B, intending to cause Z's death, knowingly co-operate in causing that effect by illegally omitting, each during the time of his attendance, to furnish Z with food supplied to them for that purpose. Z dies of hunger. Both A and B are guilty of the murder of Z.

(*c*) A, a jailor, has the charge of Z, a prisoner. A, intending to cause Z's death, illegally omits to supply Z with food; in consequence of which Z is much reduced in strength, but the starvation is not sufficient to cause his death. A is dismissed from his office, and B succeeds him. B, without collusion or co-operation with A, illegally omits to supply Z with food, knowing that he is likely thereby to cause Z's death. Z dies of hunger. B is guilty of murder; but, as A did not aco-operte with B, A is guilty only of an attempt to commit murder.

Persons concerned in criminal act may be guilty of different offences.

38. Where several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act.

Illustration.

A attacks Z under such circumstances of grave provocation that his killing of Z would be only culpable homicide not amounting to murder. B having ill-will towards Z and intending to kill him, and not having been subject to the provocation, assists A in killing Z. Here, though A and B are both engaged in causing Z's death, B is guilty of murder, and A is guilty only of culpable homicide.

"Voluntarily."

39. A person is said to cause an effect "voluntarily," when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.

Illustration.

A sets fire, by night, to an inhabited house in a large town, for the purpose of facilitating robbery, and thus

causes the death of a person. Here, A may not have intended to cause death, and may even be sorry that death has been caused by his act; yet, if he knew that he was likely to cause death, he has caused death voluntarily.

"Offence." *40. Except in the chapter and sections mentioned in clauses 2 and 3 of this section, the word "offence" denotes a thing made punishable by this Code.

In Chapter IV and in the following sections, namely, sections† 64, 65, 66, 67, 71, 109, 110, 112, 114, 115, 116, 117, 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389 and 445, the word "offence" denotes a thing punishable under this Code, or under any special or local law as hereinafter defined.

And in sections 141, 176, 177, 201, 202, 212, 216 and 441 the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.

"Special Law." **41.** A "Special Law" is a law applicable to a particular subject.

"Local Law." **42.** A "Local Law" is a law applicable only to a particular part of British India.

"Illegal." **43.** The word "illegal" is applicable to every thing which is an offence or which is prohibited by law, or which furnishes ground for a civil action; and a person is said to be "legally bound to do" whatever it is illegal in him to omit.

"Legally bound to do."

"Injury." **44.** The word "injury" denotes any harm whatever illegally caused to any person, in body, mind, reputation or property.

"Life." **45.** The word "life" denotes the life of a human being, unless the contrary appears from the context.

"Death." **46.** The word "death" denotes the death of a human being, unless the contrary appears from the context.

"Animal." **47.** The word "animal" denotes any living creature, other than a human being.

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* This section was substituted for the original section by Section 2 of the Indian Penal Code Amendment Act, 1870 (27 of 1870) as applied to Mysore by Government of India Foreign Department Notification No. 41, dated 10th March 1871.

† The figures 64, 65, 66, 67 and 71 were inserted by Act I of 1904, section 5.

Sections 48-55.

"Vessel." **48.** The word "vessel" denotes anything made for the conveyance by water of human beings, or of property.

"Year." **49.** Wherever the word "year" or the word "month" is used, it is to be understood that the year or the month is to be reckoned according to the British Calendar.

"Section." **50.** The word "section" denotes one of those portions of a Chapter of this Code which are distinguished by prefixed numeral figures.

"Oath." **51.** The word "oath" includes a solemn affirmation substituted by law for an oath, and any declaration required or authorized by law to be made before a public servant, or to be used for the purpose of proof, whether in a Court of Justice or not.

"Good faith." **52.** Nothing is said to be done or believed in good faith, which is done or believed without due care and attention.

CHAPTER III.

OF PUNISHMENTS.

Punishments. **53.** The punishments to which offenders are liable under the provisions of this Code are—

First,—Death;

Secondly,—Transportation;

Thirdly,—Penal Servitude;

Fourthly,—Imprisonment, which is of two descriptions namely—

(1) Rigorous, that is, with hard labour;

(2) Simple;

Fifthly,—Forfeiture of property;

Sixthly,—Fine.

Commutation of sentence of death. **54.** In every case in which sentence of death shall have been passed, the Government of India or the Government of the place within which the offender shall have been sentenced may, without the consent of the offender, commute the punishment for any other punishment provided by this Code.

Commutation of sentence of transportation for life. **55.** In every case in which sentence of transportation for life shall have been passed, the Government of India or the Government of the place within which the offender shall have been sentenced may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years.

Sections 56-63.

Europeans and Americans to be sentenced to penal servitude instead of transportation.

56. Whenever any person, being an European or American, is convicted of an offence punishable under this Code with transportation, the Court shall sentence the offender to penal servitude instead of transportation, according to the provisions of Act XXIV of 1855.

*Provided that, where an European or American offender would, but for such Act, be liable to be sentenced or ordered to be transported for a term exceeding ten years, but not for life, he shall be liable to be sentenced or ordered to be kept in penal servitude for such term exceeding six years as to the Court seems fit, but not for life.

Fractions of terms of punishment.

57. In calculating fractions of terms of punishment, transportation for life shall be reckoned as equivalent to transportation for twenty years.

Offenders sentenced to transportation how to be dealt with until transported.

58. In every case in which a sentence of transportation is passed, the offender, until he is transported, shall be dealt with in the same manner as if sentenced to rigorous imprisonment, and shall be held to have been undergoing his sentence of transportation during the term of his imprisonment.

In what cases transportation may be awarded instead of imprisonment.

59. In every case in which an offender is punishable with imprisonment for a term of seven years or upwards, it shall be competent to the Court which sentences such offender, instead of awarding sentence of imprisonment, to sentence the offender to transportation for a term not less than seven years, and not exceeding the term for which by this Code such offender is liable to imprisonment.

Sentence may be (in certain cases of imprisonment) wholly or partly rigorous or simple.

60. In every case in which an offender is punishable with imprisonment which may be of either description, it shall be competent to the Court which sentences such offender to direct in the sentence that such imprisonment shall be wholly rigorous, or that such imprisonment shall be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple.

[Sections 61 and 62 were repealed by Act II of 1922, Section 3.]

Amount of fine.

63. Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive.

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* This proviso was added by the Indian Penal Code Amendment Act, XXVII of 1870, as applied to Mysore by Government of India Foreign Department Notification No. 41, dated 10th March 1871.

Sections 64-69.

*64. In every case of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment,

Sentence of imprisonment in default of payment of fine.

and in every case of an offence punishable with imprisonment or fine, or with fine only, in which the offender is sentenced to a fine,

it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence.

Limit of term of imprisonment for default in payment of fine when the offence is punishable with imprisonment as well as fine.

65. The term for which the Court directs the offender to be imprisoned in default of payment of a fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine.

Description of imprisonment for such default.

66. The imprisonment which the Court imposes in default of payment of a fine may be of any description to which the offender might have been sentenced for the offence.

Term of imprisonment for default in payment of fine, when the offence is punishably with fine only

67. If the offence be punishable with fine only †[the imprisonment which the Court imposes in default of payment of the fine shall be simple and] the term for which the Court directs the offender to be imprisoned, in default of payment of fine, shall not exceed the following scale, that is to say, for any term not exceeding two months when the amount of the fine shall not exceed fifty-rupees, and for any term not exceeding four months when the amount shall not exceed one hundred rupees, and for any term not exceeding six months in any other case.

Such imprisonment to terminate upon payment of the fine.

68. The imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law.

Termination of such imprisonment upon payment of proportional part of fine.

69. If, before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine be paid or levied that the term of imprisonment

* The first two clauses of section 64 were substituted for the words "in every case in which an offender is sentenced to a fine" by Act I of 1904, section 6.

† These words were inserted by Act I of 1904, section 7.

suffered in default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate.

Illustration.

A is sentenced to a fine of one hundred rupees and to four months' imprisonment in default of payment. Here, if seventy-five rupees of the fine be paid or levied before the expiration of one month of the imprisonment, A will be discharged as soon as the first month has expired. If seventy-five rupees be paid or levied at the time of the expiration of the first month, or at any later time while A continues in imprisonment, A will be immediately discharged. If fifty rupees of the fine be paid or levied before the expiration of two months of the imprisonment, A will be discharged as soon as the two months are completed. If fifty rupees be paid or levied at the time of the expiration of those two months, or at any later time while A continues in imprisonment, A will be immediately discharged.

Fine may be levied within six years or at any time during the term of imprisonment.

70. The fine, or any part thereof which remains unpaid, may be levied at any time within six years after the passing of the sentence, and if, under the sentence, the offender be liable to imprisonment for a longer period than six years, then at any time previous to the expiration of that period; and the death of the offender does not discharge from the liability any property, which would, after his death, be legally liable for his debts.

Death of offender not to discharge his property from liability

Limit of punishment of offence which is made up of several offences.

71. Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.

*[Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or

where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence,

the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences.]

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* This clause was added by Act I of 1904, section 8.

Illustrations.

(*a*) A gives Z fifty strokes with a stick. Here A may have committed the offence of voluntarily causing hurt to Z by the whole beating, and also by each of the blows which make up the whole beating. If A were liable to punishment for every blow, he might be imprisoned for fifty years, one for each blow. But he is liable only to one punishment for the whole beating.

(*b*) But if, while A is beating Z, Y interferes, and A intentionally strikes Y, here as a blow given to Y is not part of the act whereby A voluntarily causes hurt to Z, A is liable to one punishment for voluntarily causing hurt to Z, and to another for the blow given to Y.

Punishment of a person found guilty of on of several offences, the judgment stating that it is doubtful of which.

72. In all cases in which judgment is given that a person is guilty of one of several offences specified in the judgment, but that it is doubtful of which of these offences he is guilty, the offender shall be punished for the offence for which the lowest punishment is provided if the same punishment is not provided for all.

Solitary confinement.

73. Whenever any person is convicted of an offence for which, under this Code, the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say—

a time not exceeding one month if the term of imprisonment shall not exceed six months;

a time not exceeding two months if the term of imprisonment shall exceed six months and *[shall not exceed one] year;

a time not exceeding three months if the term of imprisonment shall exceed one year.

Limit of solitary confinement.

74. In executing a sentence of solitary confinement, such confinement shall in no case exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods, and when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days in any

* These words were substituted for the words "be less than a" by Act I of 1904, section 9.

Sections 75-78.

one month of the whole imprisonment awarded with intervals between the periods of solitary confinement of not less duration than such periods.

Punishment of persons convicted, after previous conviction, of an offence punishable with three years' imprisonment.

75. Whoever, having been convicted of an offence punishable under Chapter XII, or Chapter XVII, of this Code,* [or of the Indian Penal Code as in force in British India, or any other territory to which it may have been extended by the Governor-General in Council], with imprisonment of either description for a term of three years or upwards, shall be guilty of any offence punishable under either of those Chapters with imprisonment of either description for a term of three years or upwards, shall be subject for every such subsequent offence to transportation for life,† [or to imprisonment of either description for a term which may extend to ten years].

CHAPTER IV.

GENERAL EXCEPTIONS.

Act done by a person bound, or by mistake of fact believing himself bound, by law.

76. Nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be, bound by law to do it.

Illustrations.

(*a*) A, a soldier, fires on a mob by the order of his superior officer, in conformity with the commands of the law. A has committed no offence.

(*b*) A, an officer of a Court of Justice being ordered by that Court to arrest Y, and after due enquiry, believing Z to be Y, arrests Z. A has committed no offence.

Act of Judge when acting judicially.

77. Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law.

Act done pursuant to the judgment or order of a Court of Justice.

78. Nothing which is done in pursuance of, or which is warranted by the judgment or order of, a Court of Justice, if done whilst such judgment or order remains

* These words were inserted by Act V of 1925.

† These words were substituted by Act I of 1904, section 10.

Sections 79-81.

in force is an offence, notwithstanding the Court may have had no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the Court had such jurisdiction.

Act done by a person justified, or by mistake of fact believing himself justified, by law.

79. Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be justified by law, in doing it.

Illustration.

A sees Z commit what appears to A to be a murder. A, in the exercise, to the best of his judgment, exerted in good faith, of the power which the law gives to all persons of apprehending murderers in the act, seizes Z, in order to bring Z before the proper authorities. A has committed no offence, though it may turn out that Z was acting in self-defence.

Accident in the doing of a lawful act.

80. Nothing is an offence which is done by accident or misfortune, and without criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.

Illustration.

A is at a work with a hatchet; the head flies off and kills a man who is standing by. Here, if there was no want of proper caution on the part of A, his act is excusable and not an offence.

Act likely to cause harm but done without a criminal intent, and to prevent other harm.

81. Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.

Explanation.—It is a question of fact in such a case whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.

Illustrations.

(*a*) A, the captain of a steam vessel, suddenly and without any fault or negligence on his part, finds himself in such a position that, before he can stop his vessel, he must inevitably run down a boat B with twenty or thirty

passengers on board, unless he changes the course of his vessel, and that, by changing his course, he must incur risk of running down a boat C with only two passengers on board, which he may possibly clear. Here, if A alters his course without any intention to run down the boat C and in good faith for the purpose of avoiding the danger to the passengers in the boat B, he is not guilty of an offence, though he may run down the boat C by doing an act which he knew was likely to cause that effect, if it be found as a matter of fact that the danger which he intended to avoid was such as to excuse him in incurring the risk of running down the boat C.

(*b*) A, in a great fire, pulls down houses in order to prevent the conflagration from spreading. He does this with the intention in good faith of saving human life or property. Here, if it be found that the harm to be prevented was of such a nature and so imminent as to excuse A's act, A is not guilty of the offence.

82. Nothing is an offence which is done by a child under seven years of age.

Act of a child under 7 years of age.

83. Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

Act of a child above 7 and under 12 years of age, who has not sufficient maturity of understanding.

84. Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

Act of a person of unsound mind.

85. Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law; provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

Act of a person incapable of judgment by reason of intoxication caused against his will.

86. In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act, in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will.

Offence requiring a particular intent or knowledge committed by one who is intoxicated.

Sections 87-89.

Act not intended and not known to be likely to cause death or grievous hurt, done by consent.

87. Nothing which is not intended to cause death or grievous hurt, and which is not known by the doer to be likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person above eighteen years of age, who has given consent, whether express or implied, to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm.

Illustration.

A and Z agree to fence each other for amusement. This agreement implies the consent of each to suffer any harm which, in the course of such fencing, may be caused without foul play; and if A, while playing fairly, hurts Z, A commits no offence.

Act not intended to cause death, done by consent in good faith for the benefit of a person.

88. Nothing, which is not intended to cause death is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.

Illustration.

A, a surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under a painful complaint, but not intending to cause Z's death and intending in good faith, Z's benefit, performs that operation on Z, with Z's consent. A has committed no offence.

Act done in good faith for the benefit of a child or person of unsound mind by or by consent of guardian.

89. Nothing, which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause or be known by the doer to be likely to cause, to that person.

Provisos.

Provided—

First.—That this exception shall not extend to the intentional causing of death, or to the attempting to cause death.

Sections 90-91.

Secondly.—That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death c grievous hurt, or the curing of any grievous disease or infirmity.

Thirdly.—That this exception shall not extend to the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity.

Fourthly.—That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

Illustration.

A, in good faith, for his child's benefit without his child's consent, has his child cut for the stone by a surgeon, knowing it to be likely that the operation will cause the child's death, but not intending to cause the child's death. A is, within the exception, inasmuch as his object was the cure of the child.

Consent known to be given under fear or misconception.

90. A consent is not such a consent as it intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or,

Consent of a child or person of unsound mind.

If the consent is given by a person who, from unsoundness of mind or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or,

unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

Acts which are offences independently of harm caused to the person consenting, are not within the exceptions, in sections 87, 88 and 89.

91. The exceptions in sections 87, 88 and 89 do not extend to acts which are offences independently of any harm which they may cause, or be intended to cause, or be known to be likely to cause, to the person giving the consent, or on whose behalf the consent is given.

Section 92.

Illustration.

Causing miscarriage (unless caused in good faith for the purpose of saving the life of the woman) is an offence independently of any harm which it may cause or be intended to cause to the woman. Therefore, it is not an offence "by reason of such harm"; and the consent of the woman or of her guardian to the causing of such miscarriage does not justify the act.

Act done in good faith for the benefit of a person without consent.

92. Nothing is an offence by reason of any harm which it may cause to a person for whose benefit it is done in good faith, even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit.

Provisos.

Provided—

First.—That this exception shall not extend to the intentional causing of death, or the attempting to cause death;

Secondly.—That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt or the curing of any grievous disease or infirmity;

Thirdly.—That this exception shall not extend to the voluntary causing of hurt, or to the attempting to cause hurt, for any purpose other than the preventing of death or hurt;

Fourthly.—That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

Illustrations.

(*a*) Z is thrown from his horse, and is insensible. A, a surgeon, finds that Z requires to be trepanned. A, not intending Z's death, but in good faith, for Z's benefit, performs the trepan before Z recovers his power of judging for himself. A has committed no offence.

(*b*) Z is carried off by a tiger. A fires at the tiger, knowing it to be likely that the shot may kill Z, but not intending to kill Z, and in good faith intending Z's benefit.

Sections 93-94.

A's ball gives Z a mortal wound. A has committed no offence.

(*c*) A, a surgeon, sees a child suffer an accident which is likely to prove fatal unless an operation be immediately performed. There is not time to apply to the child's guardian. A performs the operation in spite of the entreaties of the child, intending, in good faith, the child's benefit. A has committed no offence.

(*d*) A is in a house which is on fire, with Z, a child. People below hold out a blanket. A drops the child from the house-top, knowing it to be likely that the fall may kill the child, but not intending to kill the child, and intending, in good faith, the child's benefit. Here, even if the child is killed by the fall, A has committed no offence.

Explanation.—Mere pecuniary benefit is not benefit within the meaning of sections 88, 89 and 92.

Communication made in good faith.

93. No communication made in good faith is an offence by reason of any harm to the person to whom it is made, for the benefit of that person.

Illustration.

A, a surgeon, in good faith, communicates to a patient his opinion that he cannot live. The patient dies in consequence of the shock. A has committed no offence, though he knew it to be likely that the communication might cause the patient's death.

Act to which a person is compelled by threats.

94. Except murder, and offences against the State punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence; provided the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

Explanation 1.—A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits knowing their character, is not entitled to the benefit of this exception, on the ground of his having been compelled by his associates to do anything that is an offence by law.

Sections 95-98.

Explanation 2.—A person seized by a gang of dacoits, and forced by threat of instant death, to do a thing which is an offence by law, for example, a smith compelled to take his tools and to force the door of a house for the dacoits to enter and plunder it, is entitled to the benefit of this exception.

Act causing slight harm.

95. Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

OF THE RIGHT OF PRIVATE DEFENCE.

Nothing done in private defence is an offence.

96. Nothing is an offence which is done in the exercise of the right of private defence.

Right of private defence of the body and of property.

97. Every person has a right, subject to the restrictions contained in section 99, to defend—

First.—His own body, and the body of any other person, against any offence affecting the human body;

Secondly.—The property, whether moveable or immoveable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass.

Right of private defence against the act of a person of unsound mind, etc.

98. When an act, which would otherwise be a certain offence is not that offence, by reason of the youth, the want of maturity of understanding, the unsoundness of mind, or the intoxication of the person doing that act, or by reason of any misconception on the part of that person, every person has the same right of private defence against that act which he would have if the act were that offence.

Illustrations.

(*a*) Z, under the influence of madness, attempts to kill A. Z is guilty of no offence. But A has the same right of private defence which he would have if Z were sane.

(*b*) A enters by night a house which he is legally entitled to enter. Z, in good faith, taking A for a housebreaker, attacks A. Here Z, by attacking A under this

misconception, commits no offence. But A has the same right of private defence against Z, which he would have if A were not acting under that misconception.

Acts against which there is no right of private defence.

99. *First.*—There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law.

Second.—There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law.

Extent to which the right may be exercised.

Third.—There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.

Fourth.—The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

Explanation 1.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by a public servant as such, unless he knows, or has reason to believe, that the person doing the act is such public servant.

Explanation 2.—A person is not deprived of the right of private defence against an act done, or attempted to be done by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or if he has authority in writing, unless he produces such authority, if demanded.

When the right of private defence of the body extends to causing death.

100. The right of private defence of the body extends, under the restrictions mentioned in the last preceding section to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely—

First.—Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

Sections 101-103.

Secondly.—Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

Thirdly.—An assault with the intention of committing rape;

Fourthly.—An assault with the intention of gratifying unnatural lust;

Fifthly.—An assault with the intention of kidnapping or abducting;

Sixthly.—An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

When such right extends to causing any harm other than death.

101. If the offence be not of any of the descriptions enumerated in the last preceding section, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in section 99, to the voluntary causing to the assailant of any harm other than death.

Commencement and continuance of the right of private defence of the body.

102. The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence, though the offence may not have been committed; and it continues as long as such apprehension of danger to the body continues.

When the right of private defence of property extends to causing death.

103. The right of private defence of property extends, under the restrictions mentioned in section 99, to the voluntary causing of death or of any other harm to the wrong-doer, if the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated, namely—

First.—Robbery.

Secondly.—House-breaking by night.

Thirdly.—Mischief by fire committed on any building tent or vessel, which building, tent or vessel is used as a human dwelling, or as a place for the custody of property.

Fourthly.—Theft, mischief or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised.

Sections 104-106.

When such right extends to causing any harm other than death.

104. If the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right of private defence, be theft, mischief or criminal trespass, not of any of the descriptions enumerated in the last preceding section, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in section 99, to the voluntary causing to the wrong-doer of any harm other than death.

Commencement and continuance of the right of private defence of property.

105. *First.*—The right of private defence of property commences when a reasonable apprehension of danger to the property commences.

Second.—The right of private defence of property against theft continues till the offender has effected his retreat with the property, or the assistance of the public authorities is obtained, or the property has been recovered.

Third.—The right of private defence of property against robbery continues as long as the offender causes or attempts to cause to any person death or hurt or wrongful restraint, or as long as the fear of instant death, or of instant hurt, or of instant personal restraint continues.

Fourth.—The right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief.

Fifth.—The right of private defence of property against house-breaking by night continues as long as the house-trespass which has been begun by such house-breaking continues.

Right of private defence against a deadly assault when there is risk of harm to an innocent person.

106. If, in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk.

Illustration.

A is attacked by a mob who attempt to murder him. He cannot effectually exercise his right of private defence without firing on the mob, and he cannot fire without risk of harming young children who are mingled with the mob. A commits no offence if by so firing he harms any of the children.

CHAPTER V.

OF ABETMENT.

107. A person abets the doing of a thing, who—

First.—Instigates any person to do that thing; or—

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or—

Thirdly.—Intentionally aids by any act or illegal omission, the doing of that thing.

Explanation 1.—A person who, by wilful misrepresentation or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration.

A, a public officer, is authorised by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

Abettor.

108. A person abets an offence who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

Explanation 1.—The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

Explanation 2.—To constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offense should be caused.

Section 108.

Illustrations.

(*a*) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.

(*b*) A instigates B to murder D. B, in pursuance of the instigation, stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

Explanation 3.—It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

Illustrations.

(*a*) A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence, if committed by a person capable by law of committing an offence, and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.

(*b*) A, with the intention of murdering Z, instigates B, a child, under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the act, and thereby causes Z's death. Here though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder, and he is therefore subject to the punishment of death.

(*c*) A instigates B to set fire to a dwelling-house. B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling-house, and is liable to the punishment provided for that offence.

(*d*) A, intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z's possession. A induces B to believe that the property belongs to A. B takes the property out of Z's possession, in good faith, believing it to be A's property. B, acting under this misconception, does not take dishonestly, and therefore does not commit theft. But A is guilty of abetting theft, and

is liable to the same punishment as if B had committed theft.

Explanation 4.—The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

Illustration.

A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B's instigation. B is liable to be punished for his offence with the punishment for murder, and as A instigated B to commit the offence, A is also liable to the same punishment.

Explanation 5.—It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engage in the conspiracy in pursuance of which the offence is committed.

Illustration.

A concerts with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C, mentioning that a third person is to administer the poison, but without mentioning A's name. C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison. Z dies in consequence. Here, though A and C have not conspired together, yet C has been engaged in the conspiracy in pursuance of which Z has been murdered. C has therefore committed the offence defined in this section and is liable to the punishment for murder.

Abetment in Mysore of offences outside it.

*108-A. A person abets an offence within the meaning of this Code who, in Mysore, abets the commission of any act without and beyond Mysore which would constitute an offence if committed in Mysore.

Illustration.

A, in Mysore, instigates B, a foreigner in Goa, to commit a murder in Goa. A is guilty of abetting murder.

*This section was added by section 11 of Act I of 1904.

Sections 109-111.

109. Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.

Explanation.—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

Illustrations.

(*a*) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B accepts the bribe. A has abetted the offence defined in section 161.

(*b*) A instigates B to give false evidence. B, in consequence of the instigation, commits that offence. A is guilty of abetting that offence, and is liable to the same punishment as B.

(*c*) A and B conspire to poison Z. A, in pursuance of the conspiracy, procures the poison and delivers it to B in order that he may administer it to Z. B, in pursuance of the conspiracy, administers the poison to Z in A's absence and thereby causes Z's death. Here B is guilty of murder. A is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.

110. Whoever abets the commission of an offence shall, if the person abetted does the act with a different intention or knowledge from that of the abettor, be punished with the punishment provided for the offence which would have been committed if the act had been done with the intention or knowledge of the abettor and with no other.

Punishment of abetment if the person abetted does the act with a different intention from that of the abettor.

111. When an act is abetted and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it; provided the act done was a probable consequence of the abetment, and was committed under the influence of the instigation, or with the aid or in pursuance of the conspiracy which constituted the abetment.

Liability of abettor when one act is abetted and a different act is done.

Proviso.

Section 112.

Illustrations.

(*a*) A instigates a child to put poison into the food of Z, and gives him poison for that purpose. The child, in consequence of the instigation, by mistake puts the poison into the food of Y, which is by the side of that of Z. Here, if the child was acting under the influence of A's instigation and the act done was under the circumstances a probable consequence of the abetment, A is liable in the same manner and to the same extent as if he had instigated the child put the poison into the food of Y.

(*b*) A instigates B to burn Z's house. B sets fire to the house and at the same time commits theft of property there. A, though guilty of abetting the burning of the house, is not guilty of abetting the theft; for the theft was a distinct act and not a probable consequence of the burning.

(*c*) A instigates B and C to break into an inhabited house at midnight for the purpose of robbery, and provides them with arms for that purpose. B and C break into the house, and being resisted by Z, one of the inmates, murder Z. Here, if that murder was the probable consequence of the abetment, A is liable to the punishment provided for murder.

Abettor when liable to cumulative punishment for act abetted and for act done.

112. If the act for which the abettor is liable under the last preceding section is committed in addition to the act abetted and constitutes a distinct offence, the abettor is liable to punishment for each of the offences.

Illustration.

A instigates B to resist by force a distress made by a public servant. B, in consequence, resists that distress. In offering the resistance, B voluntarily causes grievous hurt to the officer executing the distress. As B has committed both the offence of resisting the distress and the offence of voluntarily causing grievous hurt, B is liable to punishment for both these offences; and, if A knew that B was likely voluntarily to cause grievous hurt in resisting the distress, A will also be liable to punishment for each of the offences.

Sections 113-115.

Liability of abettor for an effect caused by the act abetted different from that intended by the abettor.

113. When an act is abetted with the intention on the part of the abettor of causing a particular effect, and an act for which the abettor is liable in consequence of the abetment, causes a different effect from that intended by the abettor, the abettor is liable for the effect caused, in the same manner and to the same extent as if he had abetted the act with the intention of causing that effect; provided he knew that the act abetted was likely to cause that effect.

Illustration.

A instigates B to cause grievous hurt to Z. B, in consequence of the instigation, causes grievous hurt to Z. Z dies in consequence. Here, if A knew that the grievous hurt abetted was likely to cause death, A is liable to be punished with the punishment provided for murder.

Abettor present when offence is committed.

114. Whenever any person, who, if absent, would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.

Abetment of an offence punishable with death or transportation for life i the offence be not committed in consequence of the abetment.

115. Whoever abets the commission of an offence punishable with the death or transportation for life shall, if that offence be not committed in consequence of the abetment, and no express provision is made by the Code for the punishment of such abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

If an act which causes harm be done in consequence of the abetment.

and if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

Illustration.

A instigates B to murder Z. The offence is not committed. If B had murdered Z, he would have been subject to the punishment of death or transportation for life. Therefore A is liable to imprisonment for a term which may extend to seven years and also to a fine; and if any hurt be done to Z, in consequence of the abetment, he will be liable to imprisonment for a term which may extend to fourteen years, and to fine.

Sections 116-117.

Abetment of an offence punishable with imprisonment, if the offence be not committed in consequence of the abetment.

116. Whoever abets, an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of any description provided for that offence, for a term which may extend to one-fourth part of the longest term provided for that offence, or with such fine as is provided for that offence, or with both;

If the abettor or the person abetted be a public servant whose duty it is to prevent the offence.

and if the abettor or the person abetted is a public servant, whose duty it is to prevent the commission of such offence, the abettor shall be punished with imprisonment of any description provided for that offence, for a term which may extend to one-half of the longest term provided for the offence, or with such fine as is provided for the offence, or with both.

Illustrations.

(*a*) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B refuses to accept the bribe. A is punishable under this section.

(*b*) A instigates B to give false evidence. Here, if B does not give false evidence, A has nevertheless committed the offence defined in this section, and is punishable accordingly.

(*c*) A, a police officer, whose duty is to prevent robbery, abets the commission of robbery. Here, though the robbery be not committed, A is liable to one-half of the longest term of imprisonment provided for that offence, and also to fine.

(*d*) B abets the commission of robbery by A, a police officer, whose duty it is to prevent that offence. Here, though the robbery be not committed B is liable to one-half of the longest term of imprisonment provided for the offence of robbery, and also to fine.

Abetting the commission of an offence by the public or by more than ten persons.

117. Whoever abets the commission of an offence by the public generally, or by any number or class of persons exceeding ten, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine or with both.

Sections 118-119.

Illustration.

A affixes in a public place a placard, instigating a sect consisting of more than ten members to meet at acertain time and place, for the purpose of attacking the members of an adverse sect, while engaged in a procession. A has committed the offence defined in this section.

Concealing a design to commit an offence punishable with death or transportation for life.

118. Whoever intending to facilitate, or knowing it to be likely that he will thereby faciliate, the commission of an offence punishable with death or transportation for life, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design shall, if that offence be committed, be punished with imprisonment of either description for a term which may extend to seven yēars; or if the offence be not committed, with imprisonment of either description for a term which may extend to three years; and in either case shall also be liable to fine.

If the offence be committed.

If the offence be not committed.

Illustration.

A knowing that dacoity is about to be committed at B, falsely informs the Magistrate that a dacoity is about to be committed at C, a place in an opposite direction, and thereby misleads the Magistrate with intent to facilitate the commission of the offence. The dacoity is committed at B in pursuance of the design. A is punishable under this section.

A public servant concealing a design to commit an offence which it is his duty to prevent.

119. Whoever being a public servant, intending to facilitate or knowing it to be likely that he will thereby facilitate, the commission of any offence, the commission of which it is his duty as such public servant to prevent voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design,

shall, if the offence be committed, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the longest term of such imprisonment, or with such fine as is provided for that offence, or with both;

If the offence be committed.

or if the offence be punishable with death or transportation for life, with imprisonment of either description for a term which may extend to ten years;

If the offence be punishable with death, etc.

If the offence be not committed.

or, if the offence be not committed, shall be punished with imprisonment of any description provided for the offence for a term which may extend to one-fourth part of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

Illustration.

A, an officer of police, being legally bound to give information of all designs to commit robbery which may come to his knowledge, and knowing that B designs to commit robbery, omits to give such information, with intent to facilitate the commission of that offence. Here A has by an illegal omission concealed the existence of B's design, and is liable to punishment according to the provision of this section.

Concealing a design to commit an offence punishable with imprisonment.

120. Whoever, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with imprisonment, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design,

If the offence be committed.

shall, if the offence be committed, be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth,

If not committed.

and if the offence be not committed, to one-eighth of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

CHAPTER VI.

OF OFFENCES AGAINST THE STATE.

Waging or attempting to wage war, or abetting the waging of war against the Queen.

121. Whoever wages war against the Queen, or attempts to wage such war, or abets the waging of such war, shall be punished with death, or transportation for life, * [and shall also be liable to fine].

Illustrations.

(*a*) A joins an insurrection against the Queen. A has committed the offence defined in this section.

(*b*) A in India abets an insurrection against the Queen's Government of Ceylon, by sending arms to the

* These words were substituted for the words "and shall forfeit all his property" by section 1 of Act II of 1922.

insurgents. A is guilty of abetting the waging of war against the Queen.

Conspiracy to commit offences punishable by section 121.

* **121-A.** Whoever within or without British India conspires to commit any of the offences punishable by section 121, or to deprive the Queen of the Sovereignty of British India or of any part thereof, or conspires to overawe, by means of criminal force or the show of criminal force, the Government of India or any Local Government shall be punished with transportation for life or any shorter term, or with imprisonment of either description which may extend to ten years † [and shall also be liable to fine].

Explanation.—To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shalll take place in pursuance thereof.

Collecting arms, etc., with the intention of waging war against the Queen.

122. Whoever collects men, arms or ammunition, or otherwise prepares to wage war with the intention of either waging, or being prepared to wage war against the Queen, shall be punished with transportation for life, or imprisonmnt of either description for a term not exceeding ten years, † [and shall also be liable to fine].

Concealing with intent to facilitate design to wage war.

123. Whoever by any act, or by any illegal omission, conceals the existence of a design to wage war against the Queen, intending by such concealment to facilitate, or knowing it to be likely that such concealment will facilitate the waging of such war, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Assaulting Governor-General, Governor, etc., with intent to compel or restrain the exercise of any lawful power.

124. Whoever, with the intention of inducing or compelling the Governor-General of India, or the Governor of any Presidency, or a Lieutenant-Governor or a Member of the Council of the Governor-General of India, or of the Council of any Presidency, to exercise or refrain from exercising in any manner any of the lawful powers of such Governor-General, Governor, Lieutenant-Governor, or Member of Council, assaults or wrongfully restrains, or attempts wrongfully to restrain, or overawes by means of criminal force or the show of criminal force, or attempts

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* This section was inserted by the Indian Penal Code Amendment Act, 1870 (27 of 1870) as applied to Mysore by the Government of India Foreign Department Notification No. 41, dated 10th March 1871.

† These words were inserted by S. 2 of Act II of 1922.

† These words were substituted for the words "and shall forfeit all his property" by S. 1 of Act II of 1922.

so to overawe, such Governor-General, Governor, Lieutenant-Governor, or Member of Council, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

*124-A. Whoever by words, either spoken or written or by signs, or by visible representations, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards His Majesty the King-Emperor of India, or His Highness the Maharaja, or towards the Governments established by law in British India and in the territories of His Highness the Maharaja, shall be punished with transportation for life or any shorter term, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Explanation 1.—The expression "disaffection" includes disloyalty and all feelings of enmity.

Explanation 2.—Comments expressing disapprobation of the measures of the Government of India or the Government of Mysore with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3.—Comments expressing disapprobation of the administrative or other action of the Government of India or the Government of Mysore without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Waging war against any Asiatic power in alliance with the Queen.

125. Whoever wages war against the Government of any Asiatic power in alliance or at peace with the Queen, or attempts to wage such war, or abets the waging of such war, shall be punished with transportation for life, to which fine may be added; or with imprisonment of either description for a term which may extend to seven years, to which fine may be added, or with fine.

Committing depredation on the territories of any power at peace with the Queen

126. Whoever commits depredation, or makes preparations to commit depredation, on the territories of any power in alliance or at peace with the Queen, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of any property used or

* The original section 124-A which was inserted by Act 27 of 1870, S. 5, was repealed by S. 12 of Act I of 1904, and this section substituted for it.

intended to be used in committing such depredation, or acquired by such depredation.

Receiving property taken by war or depredation mentioned in sections 125 and 126.

127. Whoever receives any property knowing the same to have been taken in the commission of any of the offences mentioned in sections 125 and 126, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of the property so received.

Public servant voluntarily allowing prisoner of State or War in his custody to escape.

128. Whoever being a public servant and having the custody of any State prisoner or prisoner of war, voluntarily allows such prisoner to escape from any place in which such prisoner is confined, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Public servant negligently suffering prisoner of State or War in his custody to escape.

129. Whoever, being a public servant and having the custody of any State prisoner or prisoner of war, negligently suffers such prisoner to escape from any place of confinement in which such prisoner is confined, shall be punished with simple imprisonment for a term which may extend to three years, and shall also be liable to fine.

Aiding escape of, rescuing or harbouring such prisoner.

130. Whoever knowingly aids or assists any State prisoner or prisoner of war in escaping from lawful custody or rescues, or attempts to rescue any such prisoner, or harbours or conceals any such prisoner who has escaped from lawful custody, or offers or attempts to offer any resistance to the recapture of such prisoner, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—A State prisoner, or prisoner of war, who is permitted to be at large on his parole within certain limits in British India, is said to escape from lawful custody if he goes beyond the limits within which he is allowed to be at large.

CHAPTER VII.

OF OFFENCES RELATING TO THE ARMY AND NAVY.

Abetting mutiny or attempting to seduce a soldier or sailor from his duty.

131. Whoever abets the committing of mutiny by an officer, soldier, or sailor, in the Army or Navy of the Queen, or attempts to seduce any such officer, soldier, or sailor from his allegiance or his duty, shall be punished

with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

* *Explanation.*—In this section the words "Officer" and "Soldier" include any person subject to the Articles of war for the better Government of Her Majesty's Army, or to the Articles of War contained in Act No. V of 1869.

Abetment of mutiny, if mutiny is committed in consequence thereof.

132. Whoever abets the committing of mutiny by an officer, soldier, or sailor, in the Army or Navy of the Queen, shall, if mutiny be committed in consequence of that abetment, be punished with death or with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Abetment of an assault by a soldeir or sailor on his superior officer, when in the execution of his office.

133. Whoever abets an assault by an officer, soldier, or sailor, in the Army or Navy of the Queen, on any superior officer being in the execution of his office, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Abetment of such assault, if the assault is committed.

134. Whoever abets an assault by an officer, soldier, or sailor, in the Army or Navy of the Queen, on any superior officer being in the execution of his office, shall, if such assault be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Abetment of the desertion of a soldier or sailor.

135. Whoever abets the desertion of any officer, soldier, or sailor, in the Army or Navy of the Queen, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Harbouring a deserter.

136. Whoever, except as hereinafter excepted, knowing or having reason to believe that an officer, soldier, or sailor, in the Army or Navy of the Queen, has deserted, harbours such officer, soldier, or sailor, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Exception.—This provision does not extend to the case in which the harbour is given by a wife to her husband.

* This explanation was added by the Indian Penal Code Amendment Act, 1870 (27 of 1870) as applied to Mysore by the Government of India Foreign Department Notification No. 41, dated 10th March 1871.

Sections 137-141.

Deserter concealed on board merchant vessel through negligence of master.

137. The master or person in charge of a merchant vessel, on board of which any deserter from the Army or Navy of the Queen is concealed, shall, though ignorant of such concealment, be liable to a penalty not exceeding five hundred rupees, if he might have known of such concealment but for some neglect of his duty as such master or person in charge, or but for some want of discipline on board of the vessel.

Abetment of act of insubordination by a soldier or sailor.

138. Whoever abets what he knows to be an act of insubordination by an officer, soldier, or sailor, in the Army or Navy of the Queen, shall, if such act of insubordination be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Person subject to Articles of War not punishable under this Code.

139. No person subject to any Articles of War for the Army or Navy of the Queen, or for any part of such Army or Navy, is subject to punishment under this Code for any of the offences defined in this Chapter.

Wearing the dress of a soldier.

140. Whoever, not being a soldier in the Military or Naval service of the Queen, wears any garb or carries any token resembling any garb or token used by such a soldier, with the intention that it may be believed that he is such a soldier, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

CHAPTER VIII.

OF OFFENCES AGAINST THE PUBLIC TRANQUILLITY.

Unlawful assembly.

141. An assembly of five or more persons is designated an "unlawful assembly," if the common object of the persons composing that assembly is—

First:—To overawe by criminal force, or show of criminal force, the Legislative or Executive Government of India, or the Government of any Presidency, or any Lieutenant-Governor, or any public servant in the exercise of the lawful power of such public servant; or

Second:—To resist the execution of any law, or of any legal process; or

Third:—To commit any mischief or criminal trespass, or other offence; or

Sections 142-148.

Fourth:—By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifth:—By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.—An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

Being a member of an unlawful assembly.

142. Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly or continues in it, is said to be a member of an unlawful assembly.

Punishment.

143. Whoever is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Joining an unlawful assembly armed with any deadly weapon.

144. Whoever, being armed with any deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

Joining or continuing in an unlawful assembly, knowing that it has been commanded to disperse.

145. Whoever joins or continues in an unlawful assembly, knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Rioting.

146. Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

Punishment for rioting.

147. Whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Rioting, armed with a deadly weapon.

148. Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be

punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Every member of an unlawful assembly to be deemed guilty of any offence committed in prosecution of common object.

149. If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

Hiring or conniving at hiring of persons to join an unlawful assembly.

150. Whoever hires or engages, or employs, or promotes, or connives at the hiring, engagement, or employment of any person to join or become a member of any unlawful assembly, shall be punishable as a member of such unlawful assembly, and for any offence which may be committed by any such person as a member of such unlawful assembly in pursuance of such hiring, engagement, or employment, in the same manner as if he had been a member of such unlawful assembly, or himself had committed such offence.

Knowingly joining or continuing in any assembly of five or more persons after it has been commanded to disperse.

151. Whoever knowingly joins or continues in any assembly of five or more persons likely to cause a disturbance of the public peace, after such assembly has been lawfully commanded to disperse, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Explanation.—If the assembly is an unlawful assembly within the meaning of section 141, the offender will be punishable under section 145.

Assaulting or obstructing public servant when suppressing riot, etc.

152. Whoever assaults or threatens to assault, or obstructs or attempts to obstruct, any public servant in the discharge of his duty as such public servant, in endeavouring to disperse an unlawful assembly, or to suppress a riot or affray, or uses, or threatens, or attempts to use criminal force to such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Wantonly giving provocation, with intent to cause riot.

153. Whoever malignantly, or wantonly, by doing anything which is illegal, gives provocation to any person intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall, if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either

If rioting be committed.

description for a term which may extend to one year, or with fine, or with both; and if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

If not committed.

Promoting enmity between classes.

*153-A. Whoever by words, either spoken or written, or by signs, or by visible representations, or otherwise, promotes or attempts to promote feelings of enmity or hatred between different classes of His Majesty the King-Emperor's or of His Highness the Maharaja's subjects, shall be punished with imprisonment which may extend to two years, or with fine, or with both.

Explanation.—It does not amount to an offence within the meaning of this section to point out, without malicious intention and with an honest view to their removal, matters which are producing, or have a tendency to produce, feelings of enmity or hatred between different classes of His Majesty the King-Emperor's or His Highness the Maharaja's subjects.

Owner or occupier of land on which an unlawful assembly is held.

154. Whenever any unlawful assembly or riot takes place, the owner or occupier of the land upon which such unlawful assembly is held, or such riot is committed, and any person having or claiming an interest in such land, shall be punishable with fine not exceeding one thousand rupees, if he or his agent or manager, knowing that such offence is being or has been committed, or having reason to believe it is likely to be committed, do not give the earliest notice thereof in his or their power to the principal officer at the nearest police station, and do not in the case of his or their having reason to believe that it was about to be committed, use all lawful means in his or their power to prevent it and, in the event of its taking place, do not use all lawful means in his or their power to disperse or suppress the riot or unlawful assembly.

Liability of person for whose benefit a riot is committed.

155. Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, such person shall be punishable with fine, if he or his agent or manager, having reason to believe that such riot was likely to be committed,

*Section 153-A was added by Section 13 of Act I of 1904.

or that the unlawful assembly by which such riot was committed was likely to be held, shall not respectively use all lawful means in his or their power to prevent such assembly or riot from taking place and for suppressing and dispersing the same.

Liability of agent of owner or occupier for whose benefit a riot is committed.

156. Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, the agent or manager of such person shall be punishable with fine, if such agent or manager having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not use all lawful means in his power to prevent such riot or assembly from taking place and for suppressing and dispersing the same.

Harbouring persons hired for an unlawful assembly.

157. Whoever harbours, receives, or assembles in any house or premises in his occupation or charge, or under his control, any persons, knowing that such persons have been hired, engaged, or employed, or are about to be hired, engaged or employed, to join or become members of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Being hired to take part in an unlawful assembly or riot.

158. Whoever is engaged or hired or offers or attempts to be hired or engaged, to do or assist in doing any of the acts specified in section 141, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both ;

Or to go armed.

and whoever, being so engaged, or hired, as aforesaid, goes armed, or engages or offers to go armed, with any deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Affray.

159. When two or more persons, by fighting in a public place, disturb the public peace, they are said to "commit an affray."

Punishment for committing affray.

160. Whoever commits an affray, shall be punished with imprisonment of either description for a term which

Section 161.

may extend to one month, or with fine which may extend to one hundred rupees, or with both.

CHAPTER IX.

OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS.

Public servant taking a gratification other than legal remuneration, in respect of an official act.

161. Whoever, being or expecting to be a public servant, accepts or obtains, or agrees to accept, or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person, with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Explanations.—"Expecting to be a public servant." If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

"Gratification." The word "gratification" is not restricted to pecuniary gratifications, or to gratifications estimable in money.

"Legal remuneration." The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government, which he serves, to accept.

"A motive or reward for doing." A person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, comes within these words.

Illustrations.

(*a*) A, a Munsiff, obtains from Z, a banker, a situation in Z's bank for A's brother, as a reward to A for

deciding a cause in favour of Z. A has committed the offence defined in this section.

(*b*) A, holding the office of Resident at the Court of a subsidiary Power, accepts a lakh of rupees from the Minister of that Power. It does not appear that A accepted this sum as a motive or reward for doing or forbearing to do any particular official act, or for rendering or attempting to render any particular service to that Power with the British Government. But it does appear that A accepted the sum as a motive or reward for generally showing favour in the exercise of his official functions to that Power. A has committed the offence defined in this section.

(*c*) A, a public servant, induces Z erroneously to believe that A's influence with the Government has obtained a title for Z, and thus induces Z to give A money as a reward for this service. A has committed the offence defined in this section.

Taking a gratification, in order, by corrupt or illegal means, to influence a public servant.

162. Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt of illegal means, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor, or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Taking a gratification, for the exercise of personal influence with a public servant.

163. Whoever accepts or obtains, or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor, or with any public servant, as such, shall be punished with simple

imprisonment for a term which may extend to one year, or with fine, or with both.

Illustration.

An advocate who receives a fee for arguing a case before a Judge; a person who receives pay for arranging and correcting a memorial addressed to Government, setting forth the services and claims of the memorialist; a paid agent for a condemned criminal who lays before the Government, statements tending to show that the condemnation was unjust,—are not within this section, inasmuch as they do not exercise or profess to exercise personal influence.

Punishment for abetment by public servant of the offences above defined.

164. Whoever, being a public servant, in respect of whom either of the offences defined in the last two preceding sections is committed, abets the offence, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Illustration.

A is a public servant. B, A's wife, receives a present as a motive for soliciting A to give an office to a particular person. A abets her doing so. B is punishable with imprisonment for a term not exceeding one year, or fine, or both. A is punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

Public servant obtaining any valuable thing without consideration, from person concerned in any proceeding or business transacted by such public servant.

165. Whoever, being a public servant, accepts or obtains, or agrees to accept or attempts to obtain, for himself or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Sections 166-167.

Illustrations.

(*a*) A, a Collector, hires a house of Z, who has a settlement case pending before him. It is agreed that A shall pay 50 rupees a month, the house being such that, if the bargain were made in good faith, A would be required to pay two hundred rupees a month. A has obtained a valuable thing from Z without adequate consideration.

(*b*) A, a Judge, buys of Z, who has a cause pending in A's Court, Government promissory notes at a discount, when they are selling in the market at a premium. A has obtained a valuable thing from Z without adequate consideration.

(*c*) Z's brother is apprehended and taken before A, a Magistrate, on a charge of perjury. A sells to Z shares in a bank at a premium, when they are selling in the market at a discount. Z pays A for the shares accordingly. The money so obtained by A is a valuable thing obtained by him without adequate consideration.

Public servant disobeying a direction of the law, with intent to cause injury to any person.

166. Whoever being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Illustration.

A, being an officer directed by law to take property in execution, in order to satisfy a decree pronounced in Z's favour by a Court of Justice, knowingly disobeys that direction of law, with the knowledge that he is likely thereby to cause injury to Z. A has committed the offence defined in this section.

Public servant framing an incorrect document with intent to cause injury.

167. Whoever, being a public servant, and being, as such public servant, charged with the preparation or translation of any document, frames or translates that document in a manner which he knows or believes to be incorrect, intending thereby to cause, or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Sections 168–171-A.

Public servant unlawfully engaging in trade.

168. Whoever, being a public servant, and being legally bound as such public servant not to engage in trade, engages in trade, shall be punished with simple imprisonment for a term which may extent to one year, or with fine, or with both.

Public servant unlawfully buying or bidding for property.

169. Whoever, being a public servant, and being legally bound as such public servant, not to purchase or bid for certain property, purchases or bids for that property, either in his own name or in the name of another, or jointly, or in shares with others, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both; and the property, if purchased, shall be confiscated.

Personating a public servant.

170. Whoever pretends to hold any particular office as a public servant, knowing that he does not hold such office, or falsely personates any other person holding such office, and in such assumed character does or attempts to do any act under colour of such office, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Wearing garb or carrying token used by public servant with fraudulent intent.

171. Whoever, not belonging to a certain class of public servants, wears any garb, or carries any token resembling any garb or token used by that class of public servants, with the intention that it may be believed, or with the knowledge that it is likely to be believed, that he belongs to that class of public servants, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

CHAPTER IX-A.*

OF OFFENCES RELATING TO ELECTIONS.

"Candidates" and "electoral right" defined.

171-A. For the purposes of this Chapter—

(*a*) "candidate" means a person who has stood or claims to have stood as a candidate at any election and includes a person who, when an election is in contemplation, holds himself out as a prospective candidate thereat:

Provided that he has subsequently stood as a candidate at such election;

(*b*) "electoral right" means the right of a person to stand, or not to stand as, or to withdraw from being, a candidate or to vote or refrain from voting at an election.

* This chapter was inserted by Act I of 1941.

Sections 171-B—171-C.

171-B. (1) Whoever— Bribery.

(i) gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right; or

(ii) accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right,

commits the offence of bribery :

Provided that a declaration of public policy or a promise of public action shall not be an offence under this section.

(2) A person who offers, or agrees to give, or offers or attempts to procure, a gratification shall be deemed to give a gratification.

(3) A person who obtains or agrees to accept or attempts to obtain a gratification, shall be deemed to accept a gratification, and a person who accepts a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, shall be deemed to have accepted the gratification as a reward.

171-C. (1) Whoever voluntarily interferes or attempts to interfere with the free exercise of any elector alright commits the offence of undue influence at an election. Undue influence at elections.

(2) Without prejudice to the generality of the provisions of sub-section (1), whoever—

(*a*) threatens any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind, or

(*b*) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of divine displeasure or of spiritual censure,

shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter, within the meaning of sub-section (1).

(3) A declaration of public policy or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this section.

Sections 171-D—171-I.

Personation at elections.

171-D. Whoever at an election applies for a voting paper or votes in the name of any other person, whether living or dead, or in a fictitious name, or who having voted once at such election applies at the same election for a voting paper in his own name, and whoever abets, procures or attempts to procure the voting by any person in any such way, commits the offence of personation at an election.

Punishment for bribery.

171-E. Whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both:

Provided that bribery by treating shall be punished with fine only.

Explanation.—"Treating" means that form of bribery where the gratification consists in food, drink, entertainment or provision.

Punishment for undue influence or personation at an election.

171-F. Whoever commits the offence of undue influence or personation at an election shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

False statement in connection with an election.

171-G. Whoever with intent to affect the result of an election makes or publishes any statement purporting to be a statement of fact which is false and which he either knows or believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate shall be punished with fine.

Illegal payments in connection with an election.

171-H. Whoever without the general or special authority in writing of a candidate, incurs or authorises expenses on account of the holding of any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to five hundred Rupees:

Provided that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority, obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate.

Failure to keep election accounts.

171-I. Whoever, being required by any law for the time being in force or any rule having the force of law to keep accounts of expenses incurred at or in connection with an election fails to keep such accounts, shall be punished with fine which may extend to five hundered rupees.

CHAPTER X.

OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.

Sections 172-174.

Absconding to avoid service of summons, or other proceeding.

172. Whoever absconds in order to avoid being served with a summons, notice or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice or order, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or if the summons, notice or order is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Preventing service of summons or other proceeding, or preventing publication thereof.

173. Whoever in any manner intentionally prevents the serving on himself, or on any other person, of any summons, notice or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice or order, or intentionally prevents the lawful affixing to any place of any such summons, notice or order, or intentionally removes any such summons, notice or order from any place to which it is lawfully affixed, or intentionally prevents the lawful making of any proclamation, under the authority of any public servant legally competent, as such public servant, to direct such proclamation to be made, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the summons, notice, order, or proclamation is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Non-attendance in obedience to an order from a public servant.

174. Whoever being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same, intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart, shall be punished with simple imprisonment for a

term which may extend to one month, or with fine which may extend to fixe hundred rupees, or with both;

or if the summons, notice, order, or proclamation is to attend in person or by agent in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustrations.

(*a*) A being legally bound to appear before the Supreme Court at Calcutta in obedience to a subpœna issuing from that Court, intentionally omits to appear. A has committed the offence defined in this section.

(*b*) A being legally bound to appear before a Zillah Judge as a witness, in obedience to a summons issued by that Zillah Judge, intentionally omits to appear. A has committed the offence defined in this section.

Omission to produce a document to a public servant by a person legally bound to produce it.

175. Whoever, being legally bound to produce or deliver up any document to any public servant, as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or if the document is to be produced or delivered up to a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustration.

A, being legally bound to produce a document before a Zillah Court, intentionally omits to produce the same. A has committed the offence defined in this section.

Omission to give notice or information to a public servant by a person legally bound to give it.

176. Whoever, being legally bound to give any notice or to furnish information on any subject to any public servant, as such, intentionally omits to give such notice, or to furnish such information in the manner and at the time required by law, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the notice or information required to be given respects the commission of an offence or is required for the purpose of preventing the commission of an

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offence, or in order to the apprehension of an offender, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Furnishing false information.

177. Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both;

or, if the information which he is legally bound to give respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustrations.

(*a*) A, a landholder, knowing of the commission of a murder within the limits of his estate, wilfully misinforms the Magistrate of the district that the death has occurred by accident in consequence of the bite of a snake. A is guilty of the offence defined in this section.

(*b*) A, a village watchman, knowing that a considerable body of strangers has passed through his village in order to commit a dacoity in the house of Z, a wealthy merchant residing in a neighbouring place, and being bound, under clause 5, section VII, Regulation III, 1821, of the Bengal Code, to give early and punctual information of the above fact to the officer of the nearest police station, wilfully misinforms the police officer that a body of suspicious characters passed through the village with a view to commit dacoity in a certain distant place in a different direction. Here A is guilty of the offence defined in this section.

* *Explanation.*—In section 176 and in this section the word "offence" includes any act committed at any place out of Mysore which, if committed in Mysore would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460; and the word "offender" includes any person who is alleged to have been guilty of any such act.

* This Explanation was added by S. 14 of Act I of 1904.

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Refusing oath or affirmation when duly required by public servant to make it.

178. Whoever refuses to bind himself by an oath * or affirmation* to state the truth, when required so to bind himself by a public servant, legally competent to require that he shall so bind himself, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Refusing to answer a public servant authorized to question.

179. Whoever, being legally bound to state the truth on any subject to any public servant, refuses to answer any question demanded of him touching that subject by such public servant in the exercise of the legal powers of such public servant, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Refusing to sign statement.

180. Whoever refuses to sign any statement made by him, when required to sign that statement by a public servant legally competent to require that he shall sign that statement, shall be punished with simple imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

False statement on oath or affirmation to public servant or person authorized to administer an oath or affimation.

181. Whoever, being legally bound by an oath * or affimation* to state the truth on any subject to any public servant or other person authorized by law to administer such oath * or affirmation*, makes to such public servant or other person as aforesaid, touching that subject, any statement which is false and which he either knows or believes to be false or does not believe to be true, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

False information with intent to cause public servant to use his lawful power to the injury of another person.

†**182.** Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant—

(*a*) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or,

(*b*) to use the lawful power of such public servant to the injury or annoyance of any person,

shall be punished with imprisonment of either description for a term which may extend to six months, or

— These words were inserted by the Indian Oaths Act, 1873 (10 of 1873) S. 15 as applied to Mysore by Government of India, Foreign Department Notification No. 67, dated 19th June 1876.

†This section was substituted for the original section 182 by Act 1 of 1904, section 15.

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with fine which may extend to one thousand rupees, or with both.

Illustrations.

(*a*) A informs a Magistrate that Z, a police officer subordinate to such Magistrate, has been guilty of neglect of duty or misconduct, knowing such information to be false, and knowing it to be likely that the information will cause the Magistrate to dismiss Z. A has committed the offence defined in this section.

(*b*) A falsely informs a public servant that Z has contraband salt in a secret place, knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of Z's premises, attended with annoyance to Z. A has committed the offence defined in this section.

(*c*) A falsely informs a policeman that he has been assaulted and robbed in the neighbourhood of a particular village. He does not mention the name of any person as one of his assailants, but knows it to be likely that in consequence of this information the police will make enquiries and institute searches in the village to the annoyance of the villagers or some of them. A has committed an offence under this section.

Resistance to the taking of property by the lawful authority of a public servant.

183. Whoever offers any resistance to the taking of any property by the lawful authority of any public servant, knowing or having reason to believe that he is such public servant, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Obstructing sale of property offered for sale by authority of a public servant.

184. Whoever intentionally obstructs any sale of property offered for sale by the lawful authority if any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Illegal purchase or bid for property offered for sale by authority of a public servant.

185. Whoever, at any sale of property held by the lawful authority of a public servant, as such, purchases or bids for any property on account of any person, whether himself or any other, whom he knows to be under a legal incapacity to purchase that property at the sale, or bids for such property not intending to perform the obligations under which he lays himself by such bidding, shall be

punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Obstructing public servant in discharge of his public functions.

186. Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Omission to assist public servant when bound by law to give assistance.

187. Whoever, being bound by law to render or furnish assistance to any public servant in the execution of his public duty, intentionally omits to give such assistance shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both;

and if such assistance be demanded of him by a public servant legally competent to make such demand for the purposes of executing any process lawfully issued by a Court of Justice, or of preventing the commission of an offence, or of suppressing a riot or affray, or of apprehending a person charged with or guilty of an offence, or of having escaped from lawful custody, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Disobedience to an order duly promulgated by a public servant.

188. Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction,

shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both;

and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation.—It is not necessary that the offender should intend to produce harm, or contemplate his

disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce harm.

Illustration.

An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has comitted the offence defined in this section.

Threat of injury to a public servant.

189. Whoever holds out any threat of injury to any public servant, or to any person in whom he believes that public servant to be interested, for the purpose of inducing that public servant to do any act, or to forbear or delay to do any act, connected with the exercise of the public functions of such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Threat of injury to induce any person to refrain from applying for protection to a public servant

190. Whoever holds out any threat of injury to any person for the purpose of inducing that person to refrain or desist from making a legal application for protection against any injury to any public servant legally empowered as such to give such protection, or to cause such protection to be given, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

CHAPTER XI.

OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.

Giving false evidence.

191. Whoever, being legally bound by an oath or by any express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence.

Explanation 1.—A statement is within the meaning of this section, whether it is made verbally or otherwise.

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Explanation 2.—A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

Illustrations.

(*a*) A, in support of a just claim which B has against Z for one thousand rupees, falsely swears on a trial that he heard Z admit the justice of B's claim. A has given false evidence.

(*b*) A, being bound by an oath to state the truth, states that he believes a certain signature to be the handwriting of Z, when he does not believe it to be the handwriting of Z. Here A states that which he knows to be false, and therefore gives false evidence.

(*c*) A, knowing the general character of Z's handwriting, states that he believes a certain signature to be the handwriting of Z; A in good faith believing it to be so. Here A's statement is merely as to his belief, and is true as to his belief, and therefore, although the signature may not be the handwriting of Z, A has not given false evidence.

(*d*) A, being bound by an oath to state the truth, states that he knows that Z was at a particular place on a particular day, not knowing anything upon the subject. A gives false evidence, whether Z was at that place on the day named or not.

(*e*) A, an interpreter or translator, gives or certifies as a true interpretation or translation of a statement or document which he is bound by oath to interpret or translate truly, that which is not and which he does not believe to be a true interpretation or translation. A has given false evidence.

Fabricating false evidence.

192. Whoever causes any circumstance to exist, or makes any false entry in any book or record, or makes any document containing a false statement, intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person, who in such proceeding is to form an

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opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said " to fabricate false evidence".

Illustrations.

(*a*) A put jewels into a box belonging to Z, with the intention that they may be found in that box, and that this circumstance may cause Z to be convicted of theft. A has fabricated false evidence.

(*b*) A makes a false entry in his shop book for the purpose of using it as corroborative evidence in a Court of Justice. A has fabricated false evidence.

(*c*) A, with the intention of causing Z to be convicted of a criminal conspiracy, writes a letter in imitation of Z's handwriting, purporting to be addressed to an accomplice in such criminal conspiracy and puts the letter in a place which he knows that the officers of the police are likely to search. A has fabricated false evidence.

Punishment for false evidence.

193. Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation 1.—A trial before a Court Martial * is a judicial proceeding.

Explanation 2.—An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration.

A, in an enquiry before a Magistrate for the purpose of ascertaining whether Z ought to be committed for trial, makes on oath a statement which he knows to

* Here the words "or before a Military Court of Request" were repealed by Act I of 1904, Section 16.

be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

Explanation 3.—An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration.

A, in an enquiry before an officer deputed by a Court of Justice to ascertain on the spot the boundaries of land, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

Giving or fabricating false evidence with intent to procure conviction of a capital offence.

194. Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which is capital by this Code, * [or any other law for the time being in force in the territories of Mysore], shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine;

If innocent person be there by convicted and executed.

and if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false evidence, shall be punished either with death, or the punishment hereinbefore described.

Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation or imprisonment.

195. Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which by this Code, * [or any other law for the time being in force in the territories of Mysore], is not capital, but punishable with transportation for life, or imprisonment for a term of seven years of upwards, shall be punished as a person convicted of that offence would be liable to be punished.

Illustration.

A gives false evidence before a Court of Justice, intending thereby to cause Z to be convicted of a dacoity. The punishment of docoity is transportation for life, or rigorous imprisonment for a term which may extend to

* Those words were inserted by the Mysore Railways Act, 1894 (IV of 1894), section 130.

ten years, with or without fine. A, therefore, is liable to such transportation or imprisonment, with or without fine.

Using evidence known to be false.

196. Whoever corruptly uses or attempts to use as true or genuine evidence, any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.

Issuing or signing a false certificate.

197. Whoever issues or signs any certificate required by law to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence, knowing or believing that such certificate is false in any material point, shall be punished in the same manner as if he gave false evidence.

Using as a true certificate one known to be false in a material point.

198. Whoever corruptly uses or attempts to use any such certificate as a true certificate, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

False statement made in any declaration which is by law receivable as evidence.

199. Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorized by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false, or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

Using as true any such declaration known to be false.

200. Whoever corruptly uses or attempts to use as true any such declaration, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

Explanation.—A declaration which is inadmissible merely upon the ground of some informality, is a declaration within the meaning of sections 199 and 200.

Causing disappearance of evidence of an offence committed, or giving false information touching it to screen the offender.

201. Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false,

If a capital offence.

shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

Sections 202-204.

If punishable with transportation.

and if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

If punishable with less than ten years' imprisonment.

and if the offence is punishable with imprisonment for any term not extending to ten years. shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

Illustration.

A, knowing that B has murdered Z, assists B to hide the body with the intention of screeing B from punishment. A is liable to imprisonment of either description for seven years, and also to fine.

Intentional omission to give information of an offence by a person bound to inform.

202. Whoever, knowing or having reason to believe that an offence has been committed, intentionally omits to give any information respecting that offence which he is legally bound to give, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Giving false information respecting an offence committed.

203. Whoever, knowing or having reason to believe that an offence has ben committed, gives any information respecting that offence which he knows or believes to be false, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

* *Explanation.*—In sections 201 and 202 and in this section the word "offence" includes any act committed at any place out of Mysore which, if committed in Mysore would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459, and 460.

Destruction of document to prevent its production as evidence.

204. Whoever secretes or destroys any document which he may be lawfully compelled to produce as evidence in a Court of Justice, or in any proceeding lawfully held before a public servant, as such, or obliterates or renders illegible the whole or any part of such document with the intention of preventing the same from being

* This Explanation was added by Act I of 1904, section 17.

produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

False personation for the purpose of any act or proceeding in a suit.

205. Whoever falsely personates another, and in such assumed character makes any admission or statement, or confesses judgment or causes any process to be issued, or becomes bail or security, or does any other act in any suit or criminal prosecution, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine or with both.

Fraudulent removal or concealment of property to prevent its seizure as a forfeiture or in execution of a decree.

206. Whoever fraudulently removes, conceals, transfers, or delivers to any person any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Fraudulent claim to property to prevent its seizure as a forfeiture or in execution of a decree.

207. Whoever fraudulently accepts, receives, or claims any property or any interest therein knowing that he has no right or rightful claim to such property or interest, or practises any deception touching any right to any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Fraudulently suffering a decree for a sum not due.

208. Whoever fraudulently causes or suffers a decree or order to be passed against him at the suit of any person for a sum not due, or for a large sum than is due to such

person, or for any property or interest in property to which such person is not entitled, or fraudulently causes or suffers a decree or order to be executed against him after it has been satisfied, or for anything in respect of which it has been satisfied, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustration.

A institutes a suit against Z. Z, knowing that A is likely to obtain a decree against him, fraudulently suffers a judgment to pass against him for a larger amount at the suit of B who has no just claim against him, in order that B, either on his own account or for the benefit of Z, may share in the proceeds of any sale of Z's property which may be made under A's decree. Z has committed an offence under this section.

Dishonestly making false claim in a Court of Justice.

209. Whoever fraudulently, or dishonestly, or with intent to injure or annoy any person, makes in a Court of Justice any claim which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

Fraudulently obtaining a decree for a sum not due.

210. Whoever fraudulently obtains a decree or order against any person for a sum not due or for a larger sum than is due, or for any property or interest in property to which he is not entitled, or fraudulently causes a decree or order to be executed against any person after it has been satisfied, or for anything in respect of which it has been satisfied, or fraudulently suffers or permits any such act to be done in his name, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

False charge of offence made with intent to injure.

211. Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

and if such criminal proceeding be instituted on a false charge of an offence punishable with death, transportation

Section 212.

for life, or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Harbouring an offender.

212. Whenever an offence has been committed, whoever harbours or conceals a person whom he knows or has reason to believe to be the offender, with the intention of screening him from legal punishment,

If a capital offence.

shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine;

If punishable with transportation for life or with imprisonment.

and if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

and if the offence is punishable with imprisonment which may extend to one year and not to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

*"Offence" in this section includes any act committed at any place out of Mysore which, if committed in Mysore, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460, and every such act shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in Mysore.

Exception.—This provision shall not extend to any case in which the harbour or concealment is by the husband or wife of the offender.

Illustration.

A, knowing that B has committed dacoity, knowingly conceals B in order to screen him from legal punishment. Here, as B is liable to transportation for life, A is liable to imprisonment of either description for a term not exceeding three years, and is also liable to fine.

* This paragraph was inserted by Act I of 1904, section 18.

Sections 213-214.

Taking gift, etc., to screen an offender from punishment.

213. Whoever accepts or attempts to obtain, or agrees to accept, any gratification for himself or any other person, or any restitution of property to himself or any other person, in consideration of his concealing an offence or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment,

If a capital offence.

shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

If punishable with transportation for life, or with imprisonment.

and if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

Offering gift or restoration of property in consideration of screening offender.

214. Whoever gives or causes, or offers or agrees to give or cause, any gratification to any person, or to restore or cause the restoration of any property to any person, in consideration of that person's concealing an offence, or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment,

If a capital offence.

shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

If punishable with transportation for life, or with imprisonment.

and if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest

term of imprisonment provided for the offence, or with fine or with both.

**Exception.*—The provisions of sections 213 and 214 do not extend to any case in which the offence may lawfully be compounded.

[*Illustrations*] *Repealed by Act X of 1882 of the Governor-General of India in Council as introduced into Mysore by Act I of 1886.*

Taking gift to help to recover stolen property, etc.

215. Whoever takes or agrees or consents to take any gratification under pretence or on account of helping any person to recover any moveable property, of which he shall have been deprived by any offence punishable under this Code shall, unless he uses all means in his power to cause the offender to be apprehended and convicted of the offence, be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Harbouring an offender who has escaped from custody, or whose apprehension has been ordered.

216. Whenever any person convicted of or charged with an offence, being in lawful custody for that offence, escapes from such custody, or whenever a public servant, in the exercise of the lawful powers of such public servant, orders a certain person to be apprehended for an offence, whoever, knowing of such escape or order for apprehension, harbours or conceals that person with the intention of preventing him from being apprehended, shall be punished in the manner following, that is to say,

If a capital offence.

if the offence for which the person was in custody or is ordered to be apprehended, is punishable with death, he shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

If punishable with transportation for life or with imprisonment.

if the offence is punishable with transportation for life or imprisonment for ten years, he shall be punished with imprisonment of either description for a term which may extend to three years, with or without fine;

and if the offence is punishable with imprisonment which may extend to one year and not to ten years, he shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for such offence, or with fine, or with both.

* This Exception was substituted for the original Exception by Act I of 1904, section 19.

*"Offence" in this section includes also any act or omission of which a person is alleged to have been guilty out of Mysore, which, if he had been guilty of it in Mysore, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in Mysore; and every such act or omission shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in Mysore.

Exception.—This provision does not extend to the case in which the harbour or concealment is by the husband or wife of the person to be apprehended.

Penalty for harbouring robbers or dacoits.

†**216**-A. Whoever, knowing or having reason to believe that any persons are about to commit or have recently committed robbery or dacoity, harbours them or any of them, with the intention of facilitating the commission of such robbery or dacoity or of screening them or any of them from punishment, shall be punished with rigorous imprisonment which may extend to seven years, and shall also be liable to fine.

Explanation.—For the purposes of this section, it is immaterial whether the robbery or dacoity is intended to be committed, or has been committed, within or without Mysore.

Exception.—This provision does not extend to the case in which the harbour is by the husband or wife of the offender.

Definition of "harbour" in sections 212, 216 and 216-A.

†**216**-B. In sections 212, 216 and 216-A the word "harbour" includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition or means of conveyance, or the assisting a person in any way to evade apprehension.

Public servant disobeying a direction of law with intent to save person from punishment or property from forfeiture.

217. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or subject him to a less punishment than that to which he is liable, or with intent to save, or knowing that he is likely thereby to save any property from forfeiture or any charge to which it is liable by law, shall be punished with

* This paragraph was inserted by Act I of 1904, section 20.
† Sections 216-A and 216-B were inserted by Act I of 1904, section 21.

imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Public servant framing an incorrect record or writing with intent to save person from punishment or property from forfeiture.

218. Whoever, being a public servant, and being, as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, loss or injury to the public or to any person, or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or with intent to save or knowing that he is likely thereby to save, any property from forfeiture or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Public servant in a judicial proceeding corruptly making an order, report, etc., which he knows to be contrary to law.

219. Whoever, being a public servant, corruptly or maliciously makes or pronounces in any stage of a judicial proceeding, any report, order, verdict, or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Commitment for trial or confinement by a person having authority who knows that he is acting contrary to law.

220. Whoever, being in any office which gives him legal authority to commit persons for trial or to confinement, or to keep persons in confinement, corruptly or maliciously commits any person for trial or to confinement, or keeps any person in confinement, in the exercise of that authority, knowing that in so doing he is acting contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Intentional omission to apprehend on the part of a public servant bound by law to apprehend.

221. Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person charged with or liable to be apprehended for an offence, intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows, that is to say:

with imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with death; or

with imprisonment of either description for a term which may extend to three years, with, or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with transportation for life or imprisonment for a term which may extend to ten years; or

with imprisonment of either description for a term which may extend to two years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with or liable to be apprehended for, an offence punishable with imprisonment for a term less than ten years.

Intentional omission to apprehend on the part of a public servant bound by law to apprehend person under sentence or lawfully committed.

222. Whoever, being a public servant legally bound as such public servant to apprehend or to keep in confinement any person under sentence of a Court of Justice for any offence, * [or lawfully committed to custody] intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows, that is to say:

with transportation for life, or with imprisonment of either description for a term which may extend to fourteen years, with or without fine, if the person in confinement, or who ought to have been apprehended, is under sentence of death; or

with imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, is subject, by a sentence of a Court of Justice, or by virtue of a commutation of such sentence, to transportation for life or penal servitude for life, or to transportation or penal servitude or imprisonment for a term of ten years or upwards; or

with imprisonment of either description for a term which may extend to three years, or with fine, or with both, if the person in confinement, or who ought to have been apprehended, is subject, by a sentence of a Court of Justice, to imprisonment for a term not extending to ten years * [or if the person was lawfully committed to custody].

* These words were inserted by the Indian Penal Code (Amendment) Act, 1870 (27 of 1870), S. 8 as applied to Mysore by Government of India, Foreign Department, Notification No. 41, dated 10th March 1871.

Sections 223-225.

Escape from confinement negligently suffered by a public servant.

*223. Whoever, being a public servant, legally bound as such public servant to keep in confinement any person charged with or convicted of any offence *[or lawfully committed to custody], negligently suffers such person to escape from confinement, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Resistance or obstruction by a person to his lawful apprehension.

224. Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged or of which he has been convicted, or escapes or attempts to escape from any custody in which he is lawfully detained for any such offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Explanation.—The punishment in this section is in addition to the punishment for which the person to be apprehended or detained in custody was liable for the offence with which he was charged or of which he was convicted.

Resistance or obstruction to the lawful apprehension of another person.

Punishment.

225. Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of any other person for an offence, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained for an offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both ;

or, if the person to be apprehended, or the person rescued or attempted to be rescued, is charged with, or liable to be apprehended for an offence punishable with transportation for life, or imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ;

or, if the person to be apprehended or rescued, or attempted to be rescued, is charged with, or liable to be apprehended for, an offence punishable with death, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

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*These words were added by the Indian Penal Code (Amendment) Act, 1870 (27 of 1870), S. 8, as applied to Mysore by Government of India, Foreign Department, Notification No. 41, dated 10th March 1871.

or, if the person to be apprehended or rescued is liable, under the sentence of a Court of Justice, or by virtue of a commutation of such a sentence, to transportation for life, or to transportation, penal servitude, or imprisonment, for a term of ten years or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

or, if the person to be apprehended or rescued, or attempted to be rescued, is under sentence of death, shall be punished with transportation for life, or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

Omission to apprehend, or sufferance of escape on part of public servant, in cases not otherwise provided for.

*225-A. Whoever, being a public servant legally bound as such public servant to apprehend, or to keep in confinement, any person in any case not provided for in section 221, section 222 or section 223, or in any other law for the time being in force, omits to apprehend that person or suffers him to escape from confinement, shall be punished—

(*a*) if he does so intentionally, with imprisonment of either description for a term which may extend to three years, or with fine or with both, and

(*b*) if he does so negligently, with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Resistance or obstruction to lawful apprehension or escape or rescue, in cases not otherwise provided for.

*225-B. Whoever, in any case not provided for in section 224 or section 225 or in any other law for the time being in force, intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself or of any other person, or escapes or attempts to escape from any custody in which he is lawfully detained, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained, shall be punished with imprisonment of either description for a term which may extend to six months or with fine, or with both.

Unlawful return from transportation.

226. Whoever, having been lawfully transported, returns from such transportation, the term of such transportation not having expired, and his punishment not having been remitted, shall be punished with transportation

* Sections 225-A and 225-B were substituted by Act I of 1904, S. 22, for S. 225-A, which was inserted by Indian Penal Code (Amendment) Act, 1870 (27 of 1870), S. 9.

for life, and shall also be liable to fine, and to be imprisoned with rigorous imprisonment for a term not exceeding three years before he is so transported.

Violation of condition of remission of punishment.

227. Whoever, having accepted any conditional remission of punishment, knowingly violates any condition on which such remission was granted, shall be punished with the punishment to which he was originally sentenced, if he has already suffered no part of that punishment, and if he has suffered any part of that punishment, then with so much of that punishment as he has not already suffered.

Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.

228. Whoever intentionally offers any insult, or causes any interruption to any public servant while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Personation of a juror or assessor.

229. Whoever, by personation or otherwise, shall intentionally cause, or knowingly suffer himself to be returned, empanelled, or sworn as a juryman or assessor in any case in which he knows that he is not entitled by law to be so returned, empanelled, or sworn, or knowing himself to have been so returned, empanelled or sworn contrary to law, shall voluntarily serve on such jury or as such assessor, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

CHAPTER XII.

OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.

"Coin" defined.

230. * Coin is metal used for the time being as money, and stamped and issued by the authority of some State or Sovereign Power in order to be so used.

King's coin.

† King's coin is metal stamped and issued by the authority of the King-Emperor, or by the authority of the Government of India, or of the Government of any Presidency, or of any Government in the King-Emperor's

* This paragraph was substituted for the original paragraph by the Indian Penal Code (Amendment) Act, 1872 (19 of 1872), as applied to Mysore by Government of India, Foreign Department, Notification No. 240, dated 4th November 1872.

† This paragraph was substituted for the original paragraph by Act I of 1901, section 23.

dominions, in order to be used as money; and metal which has been so stamped and issued shall continue to be the King's coin for the purpose of this chapter, notwithstanding that it may have ceased to be used as money.

Illustrations.

(*a*) Cowries are not coin.

(*b*) Lumps of unstamped copper, though used as money, are not coin.

(*c*) Medals are not coin, inasmuch as they are not intended to be used as money.

(*d*) The coin denominated as the Company's rupee is the Queen's coin.

*(*e*) The "Farukhabad rupee," which was formerly used as money, under the authority of the Government of India, is King's coin, although it is no longer so used.

Counterfeiting coin.

231. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation.—A person commits this offence, who, intending to practise deception, or knowing it to be likely that deception will thereby be practised, causes a genuine coin to appear like a different coin.

Counterfeiting the Queen's coin.

232. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting the Queen's coin, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Making or selling instrument for counterfeiting coin.

233. Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells or disposes of, any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Making or selling Instrument for counterfeiting Queen's coin.

234. Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells or disposes of, any die or instrument, for the purpose of being

* This illustration was added by Act, I of 1934, section 23.

used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting the Queen's coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Possession of instrument or material for the purpose of using the same for counterfeiting coin.

235. Whoever is in possession of any instrument or material, for the purpose of using the same for counterfeiting coin, or knowing or having reason to believe that the same is intended to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine;

and if the coin to be counterfeited is the Queen's coin, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Abetting in India the counterfeiting of coin out of India.

236. Whoever being within British India, abets the counterfeiting of coin out of British India, shall be punished in the same manner as if he abetted the counterfeiting of such coin within British India.

Import or export of counterfeit coin.

237. Whoever imports into British India, or exports therefrom, any counterfeit coin, knowing or having reason to believe that the same is counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Import or export of counterfeits of the Queen's coin.

238. Whoever imports into British India, or exports therefrom, any counterfeit coin which he knows or has reason to believe to be a counterfeit of the Queen's coin, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Delivery to another of coin possessed with the knowledge that it is counterfeit.

239. Whoever, having any counterfeit coin, which at the time when he became possessed of it, he knew to be counterfeit, fraudulently or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Delivery of Queen's coin possessed with the knowledge that it is counterfeit.

240. Whoever, having any counterfeit coin, which is a counterfeit of the Queen's coin, and which at the time when he became possessed of it, he knew to be a counterfeit of the Queen's coin, fraudulently or with intent that fraud may be committed, delivers the same to any person,

or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Delivery to another of coin as genuine which when first possessed the deliverer did not know to be counterfeit.

241. Whoever delivers to any other person as genuine, or attempts to induce any other person to receive as genuine, any counterfeit coin, which he knows to be counterfeit, but which he did not know to be counterfeit at the time when he took it into his possession, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin counterfeited, or with both.

Illustration.

A, a coiner, delivers counterfeit Company's rupees to his accomplice B, for the purpose of uttering them. B sells the rupees to C, another utterer, who buys them knowing them to be counterfeit. C pays away the rupees for goods to D, who receives them, not knowing them to be counterfeit. D, after receiving the rupees, discovers that they are counterfeit, and pays them away as if they were good. Here D is punishable only under this section, but B and C are punishable under section 239 or 240, as the case may be.

Possession of counterfeit coin by a person who knew it to be counterfeit when he became possessed thereof.

242. Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, having known at the time when he became possessed thereof, that such coin was counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Possession of Queen's coin by a person who knew it to be counterfeit when he became possessed thereof.

243. Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, which is a counterfeit of the Queen's coin, having known at the time when he became possessed of it that it was counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Person employed in a mint causing coin to be of a different weight or composition from that fixed by law.

244. Whoever, being employed in any mint lawfully established in British India, does any act, or omits what he is legally bound to do, with the intention of causing any coin issued from that mint to be of a different weight or composition from the weight or composition fixed by

law, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

Unlawfully taking from a mint any coining instrument.

245. Whoever, without lawful authority, takes out of any mint, lawfully established in British India, any coining tool or instrument, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Fraudulently or dishonestly diminishing the weight or altering the composition of any coin.

246. Whoever, fraudulently or dishonestly performs on any coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation.—A person who scoops out part of the coin, and puts anything else into the cavity, alters the composition of that coin.

Fraudulently or dishonestly diminishing the weight or altering the composition of the Queen's coin.

247. Whoever, fraudulently or dishonestly, performs on any of the Queen's coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Altering appearance of any coin with intent that it shall pass as a coin of a different description.

248. Whoever performs on any coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Altering appearance of the Queen's coin with intent that it shall pass as a cion of a different description.

249. Whoever performs on any of the Queen's coins any operation which alters the appearance of that coin, with the intention, that the said coin shall pass as a coin of a different description shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Delivery to another of coin possessed with the knowledge that it is altered.

250. Whoever, having coin in his possession with respect to which the offence defined in section 246 or 248 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment

of either description for a term which may extend to five years, and shall also be liable to fine.

Delivery of Queen's coin possessed with the knowledge that it is altered.

251. Whoever, having coin in his possession with respect to which the offence defined in section 247 or 249 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Possession of altered coin by a person who knew it to be altered when he became possessed thereof.

252. Whoever, fraudulently or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the sections 246 or 248 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Possession of Queen's coin by a person who knew it to be altered when he became possessed thereof.

253. Whoever, fraudulently or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the sections 247 or 249 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Delivery to another of coin as genuine, which, when first possessed, the deliverer did not know to be altered.

254. Whoever delivers to any other person as genuine, or as a coin of a different description from what it is, or attempts to induce any person to receive as genuine, or as a different coin from what it is, any coin in respect of which he knows that any such operation as that mentioned in sections 246, 247, 248, or 249 has been performed, but in respect of which he did not, at the time when he took it into his possession, know that such operation had been performed, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin for which the altered coin is passed, or attempted to be passed.

Counterfeiting a Government Stamp.

255. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any stamp issued

by Government for the purpose of revenue, shall be punished with transportation for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—A person commits this offence who counterfeits by causing a genuine stamp of one denomination to appear like a genuine stamp of a different denomination.

Having possession of an instrument or material for the purpose of counterfeiting a Government Stamp.

256. Whoever has in his possession any instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Making or selling instrument for the purpose of counterfeiting a Government Stamp.

257. Whoever makes, or performs any part of the process of making, or buys, or sells, or disposes of any instrument for the purpose of being used, or knowing or having reason to believe that it is intended to be used for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Sale of counterfeit Government Stamp.

258. Whoever sells or offers for sale, any stamp which he knows, or has reason to believe to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Having possession of a counterfeit Government Stamp.

259. Whoever has in his possession any stamp which he knows to be a counterfeit of any stamp issued by Government for the purpose of revenue, intending to use or dispose of the same as a genuine stamp, or in order that it may be used as a genuine stamp, shall be punished with imprisonment of either description for a term which extend to seven years, and shall also be liable to fine.

Using as genuine a Government Stamp known to be counterfeit.

260. Whoever uses as genuine any stamp, knowing it to be a counterfit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine or with both.

Sections 261–263-A.

Effacing any writing from a substance bearing a Government Stamp or removing from a document a stamp used for it with intent to cause lose to Government.

261. Whoever, fraudulently or with intent to cause loss to the Government, removes or effaces from any substance bearing any stamp issued by Government for the purpose of revenue, any writing or document for which such stamp has been used, or removes from any writing or document a stamp which has been used for such writing or document in order that such stamp may be used for a different writing or document, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Using a Government Stamp known to have been before used.

262. Whoever, fraudulently or with intent to cause loss to the Government, uses for any purpose a stamp issued by Government for the purpose of revenue, which he knows to have been before used, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Erasure of mark denoting that stamp has been used.

263. Whoever, fraudulently or with intent to cause loss to Government, erases or removes from a stamp issued by Government for the purpose of revenue, any mark put or impressed upon such stamp for the purpose of denoting that the same has been used, or knowingly has in his possession, or sells, or disposes of, any such stamp from which such mark has been erased or removed, or sells, or disposes of any such stamp which he knows to have been used, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Prohibition of fictitious stamps.

*__263__-A. (1) Whoever—

(*a*) makes, knowingly utters, deals in or sells any fictitious stamp, or knowingly uses for any postal purpose any fictitious stamp, or

(*b*) has in his possession, without lawful excuse, any fictitious stamp, or

(*c*) makes or, without lawful excuse, has in his possession any die, plate, instrument or materials for making any fictitious stamp,

shall be punished with fine which may extend to two hundred rupees.

(2) Any such stamp, die, plate, instrument or materials in the possession of any person for making any fictitious stamp may be seized and shall be forfeited.

* Section 263-A was added by Act I of 1904, section 24.

(3) In this section, "fictitious stamp" means any stamp falsely purporting to be issued by Government for the purpose of denoting a rate of postage, or any facsimile or imitation or representation, whether on paper or otherwise, of any stamp issued by Government for that purpose.

(4) In this section and also in sections 255 to 263, both inclusive, the word "Government" when used in connection with, or in reference to, any stamp issued for the purpose of denoting a rate of postage, shall, notwithstanding anything in section 17, be deemed to include the person or persons authorized by law to administer executive Government in any part of India, and also in any part of His Majesty the King-Emperor's dominions or in any foreign country.

CHAPTER XIII.

OF OFFENCES RELATING TO WEIGHING AND MEASURING

Fraudulent use of false instrument for weighing.

264. Whoever, fraudulently uses any instrument for weighing, which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Fraudulent use of false weight or measure.

265. Whoever fraudulently uses any false weight or false measure of length or capacity, or fraudulently uses any weight or any measure of length or capacity as a different weight or measure from what it is, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Being in possession of false weight or measure.

266. Whoever is in possession of any instrument for weighing, or of any weight or of any measure of length or capacity, which he knows to be false, and intending that the same may be fraudulently used, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Making or selling false weights or measures.

267. Whoever makes, sells, or disposes of any instrument for weighing, or any weight, or any measure of length or capacity, which he knows to be false in order that the same may be used as true, or knowing that the same is likely to be used as true shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

CHAPTER XIV.

OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS.

Public nuisance.

268. A person is guilty of a public nuisance, who does any act, or is guilty of an illegal omission which causes any common injury, danger, or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.

A common nuisance is not excused on the ground that it causes some convenience or advantage.

Negligent act likely to spread infection of any disease dangerous to life.

269. Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Malignant act likely to spread infection of any disease dangerous to life.

270. Whoever malignantly does any act which is, and which he knows, or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Disobedience to a quarantine rule.

271. Whoever knowingly disobeys any rule made and promulgated by the Government of India, or by any Government, for putting any vessel into a state of quarantine, or for regulating the intercourse of vessels, in a state of quarantine with the shore or with other vessels, or for regulating the intercourse between places where an infectious disease prevails and other places, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Adulteration of food or drink which is intended for sale.

272. Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Sections 273-278.

273. Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is naxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. Sale of noxious food or drink.

274. Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy, or change the operation of such drug or medical preparation or to make it noxious, intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for, any medicinal purpose, as if it had not undergone such adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. Adulteration of drugs.

275. Whoever, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. Sale of adulterated drugs.

276. Whoever knowingly sells, or offers or exposes for sale, or issues from a dispensary for medicinal purposes, any drug or medical preparation, as a different drug or medical preparation, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. Sale of any drug as a different drug or preparation.

277. Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purposes for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both. Fouling the water of a public spring or reservoir.

278. Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of Making atmosphere noxious to health.

persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, shall be punished with fine which may extend to five hundred rupees.

Rash driving or riding on a public way.

279. Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Rash navigation of a vessel.

280. Whoever navigates any vessel in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Exhibition of a false light, mark or buoy.

281. Whoever exhibits any false light, mark or buoy intending or knowing it to be likely that such exhibition will mislead any navigator, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Conveying person by water for hire in a vessel overloaded or unsafe.

282. Whoever knowingly or negligently conveys, or causes to be conveyed for hire, any person by water in any vessel, when that vessel is in such a state or so loaded as to endanger the life of that person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Danger or obstruction in a public way or navigation.

283. Whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction or injury to any person in any public way or public line of navigation, shall be punished with fine which may extend to two hundred rupees.

Negligent conduct with respect to any poisonous substance.

284. Whoever does, with any poisonous substance, any act in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, knowingly or negligently omits to take such order with any poisonous substance in his possession as is sufficient to guard against any probable danger to human life from such poisonous substance, shall be punished with imprisonment of either description for a

term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Negligent conduct with respect to any fire or combustible matter.

285. Whoever does, with fire or any combustible matter, any act, so rashly or negligently as to endanger human life or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any fire or any combustible matter in his possession as is sufficient to guard against any probable danger to human life from such fire or combustible matter shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Negligent conduct with respect to any explosive substance.

286. Whoever does, with any explosive substance, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any explosive substance in his possession as is sufficient to guard against any probable danger to human life from that substance, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Negligent conduct with respect to any machinery in the possession or under the charge of the offender.

287. Whoever does, with any machinery, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any machinery in his possession or under his case as is sufficient to guard against any probable danger to human life from such machinery, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Negligence with respect to pulling down or repairing buildings.

288. Whoever, in pulling down or repairing any building, knowingly or negligently omits to take such order with that building as is sufficient to guard against any probable danger to human life from the fall of that building or of any part thereof, shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.

Negligence with respect to any animal.

289. Whoever knowingly or negligently omits to take such order with any animal in his possession as is sufficient to guard against any probable danger to human life,

or any probable danger of grievous hurt from such animal, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Punishment for public nuisance.

290. Whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with fine which may extend to two hundred rupees.

Continuance of nuisance after injunction to discontinue.

291. Whoever repeats or continues a public nuisance having been enjoined by any public servant who has lawful authority to issue such injunction not to repeat or continue such nuisance, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

Sale, etc., of obscene books, etc.

*__292.__ Whoever—

(*a*) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces, or has in his possession, any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, or

(*b*) imports, exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation, or

(*c*) takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene object are, for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or

(*d*) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be procured from or through any person, or

(*e*) offers or attempts to do any act which is an offence under this section,

*These sections were substituted for the original sections 292 and 293 by Act VIII of 1928, section 2.

shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Exception.—This section does not extend to any book, pamphlet writing, drawing or painting kept or used *bona fide* for religious purposes or any representation sculptured, engraved, painted or otherwise represented on or in any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.

Sale, etc., of obscene objects to young persons.

293. Whoever sells, lets to hire, distributes, exhibits or circulates to any person under the age of twenty years any such obscene object as is referred to in the last preceding section, or offers or attempts so to do, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Obscene acts and songs.

* **294.** Whoever, to the annoyance of others—

(*a*) does any obscene act in any public place, or

(*b*) sings, recites or utters any obscene song, ballad or words in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Keeping lottery office.

† **294-A.** Whoever keeps any office or place for the purpose of drawing any lottery not authorised by Government shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

And whoever publishes any proposal to pay any sum, or to deliver any goods, or to do or forbear doing anything for the benefit of any person, on any event or contingency relative or applicable to the drawing of any ticket, lot, number or figure in any such lottery, shall be punished with fine which may extend to one thousand rupees.

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* This section was substituted for the original section 294 by Act I of 1904, section 25.

† S. 294-A was inserted by the Indian Penal Code Amendment Act, 1870 (27 of 1870). S. 10, as applied to Mysore by Government of India, Foreign Department Notification No. 41, dated 10th March 1871.

CHAPTER XV.

OF OFFENCES RELATING TO RELIGION.

Injuring or defiling a place of worship with intent to insult the religion of any class.

295. Whoever destroys, damages, or defiles any place of worship, or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons, or with the knowledge that any class of persons is likely to consider such destruction, damage, or defilement as an insult to their religion, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Disturbing a religious assembly.

296. Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship, or religious ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Trespassing on burial places, etc.

297. Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby, commits any trespass in any place of worship or on any place of sculpture, or any place set apart for the performance of funeral rites, or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Uttering words, etc., with deliberate intent to wound the religious feelings of any person.

298. Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person, or makes any gesture in the sight of that person, or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Section 299.

CHAPTER XVI.

OF OFFENCES AFFECTING THE HUMAN BODY— OF OFFENCES AFFECTING LIFE.

Culpable homicide.

299. Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Illustrations.

(*a*) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z, believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.

(*b*) A knows Z to be behind a bush. B does not know it. A, intending to cause, or knowing it to be likely to cause Z's death, induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.

(*c*) A, by shooting at a fowl with intent to kill and steal it, kills B, who is behind a bush, not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B, or to cause death by doing an act that he knew was likely to cause death.

Explanation 1.—A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of the other, shall be deemed to have caused his death.

Explanation 2.—Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment, the death might have been prevented.

Explanation 3.—The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

Section 300.

Murder.

300. Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death ; or

Secondly.—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused ; or

Thirdly.—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death ; or

Fourthly.—If the person committing the act knows that it is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Illustrations.

(*a*) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(*b*) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death.

(*c*) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here, A is guilty of murder, although he may not have intended to cause Z's death.

(*d*) A, without any excuse, fires a loaded cannon into a crow of persons and kills one of them. A is guilty of murder, although he may not have had a pre-meditated design to kill any particular individual.

Section 300.

When culpable homicide is not murder.

Exception 1.—Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation, or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos :—

First.—That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly.—That the provocation is not given by anything done in obedience to the law or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly.—That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder, is a question of fact.

Illustrations.

(*a*) A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, inasmuch as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(*b*) Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.

(*c*) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, inasmuch as the provocation was given by a thing done by a public servant in the exercise of his powers.

(*d*) A appears as a witness before Z, a Magistrate. Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.

(*e*) A attempts to pull Z's nose. Z, in the exercise of the right of private defence, lays hold of A to prevent

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him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, inasmuch as the provocation was given by a thing done in the exercise of the right of private defence.

(*f*) Z strikes B. B is, by this provocation, excited to violent rage. A, a by-stander intending to take advantage of B's rage and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here, B may have committed only culpable homicide, but A is guilty of murder.

Exception 2.—Culpable homicide is not murder, if the offender, in the exercise, in good faith, of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without pre-emeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Illustration.

Z attempts to horse-whip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A believing in good faith that he can by no other means prevent himself from being horse-whipped, shoots Z dead. A has not committed murder, but only culpable homicide.

Exception 3.—Culpable homicide is not murder, if the offender, being a public servant, aiding a public servant or acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant, and without ill-will towards the person whose death is caused.

Exception 4.—Culpable homicide is not murder if it is committed without pre-meditation, in a sudden fight, in the heat of passion, upon a sudden quarrel, and without the offender's having taken undue advantage or acted in a cruel or unusual manner.

Explanation.—It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5.—Culpable homicide is not murder when the person whose death is caused, being above the age of

eighteen years, suffers death or takes the risk of death with his own consent.

Illustration.

A, by instigation, voluntarily causes Z, a person under eighteen years of age, to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death. A has therefore abetted murder.

Culpable homicide by causing the death of a person other than the person whose death was intended.

301. If a person, by doing any thing which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person, whose death he neither intends nor knows himself to be likely to cause the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.

Punishment for murder.

302. Whoever commits murder shall be punished with death, or transportation for life, and shall also be liable to fine.

Punishment for murder by a life convict.

303. Whoever, being under sentence of transportation for life, commits murder, shall be punished with death.

Punishment for culpable homicide not amounting to murder.

304. Whoever commits culpable homicide not amounting to murder, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death ;

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

Causing death by negligence.

*304-A. Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Abetment of suicide of child or insane person.

305. If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever

*S. 304-A was inserted by the Indian Penal Code Amendment Act, 1870 (27 of 1870), S. 12 as applied to Mysore by Government of India, Foreign Department Notification No. 41, dated 10th March 1871.

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abets the commission of such suicide, shall be punished with death or transportation for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine.

Abetment of suicide.

306. If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Attempt to murder.

307. Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to transportation for life, or to such punishment as is hereinbefore mentioned.

* When any person offending under this section is under sentence of transportation for life, he may, if hurt is caused, be punished with death.

Illustrations.

(*a*) A shoots at Z with intention to kill him, under such circumstances that, if death caused, A would be guilty of murder. A is liable to punishment under this section.

(*b*) A, with the intention of causing the death of a child of tender years, exposes it in a desert place. A has committed the offence defined by this section, though the death of the child does not ensue.

(*c*) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section, and if by such firing he wounds Z, he is liable to the punishment provided by the latter part of †[the first paragraph of] this section.

(*d*) A, intending to murder Z by poison, purchases poison, and mixes the same with food which remains in A's keeping; A has not yet committed the offence defined in this section. A places the food on Z's table, or delivers

* This clause was added by the Indian Penal Code Amendment Act, 1870 (27 of 1870), S. 11 as applied to Mysore by the Government of India Foreign Department, Notification No. 41, dated 10th March 1871.

† These words were inserted by Act I of 1904, S. 26.

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it to Z's servants to place it on Z's table. A has committed the offence defined in this section.

Attempt to commit culpable homicide.

308. Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description, for a term which may extend to three years, or with fine, or with both; and if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Illustration.

A, on grave and sudden provocation, fires a pistol at Z, under such circumstances that, if he thereby caused death, he would be guilty of culpable homicide not amounting to murder. A has committed the offence defined in this section.

Attempt to commit suicide.

309. Whoever attempts to commit suicide, and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year,* [or with fine, or with both].

Thug.

310. Whoever at any time, after the passing of this Act, shall have been habitually associated with any other or others for the purpose of committing robbery or child-stealing, by means of, or accompanied with murder, is a thug.

Punishment.

311. Whoever is a thug shall be punished with transportation for life, and shall also be liable to fine.

OF THE CAUSING OF MISCARRIAGE, OF INJURIES TO UNBORN CHILDREN, OF THE EXPOSURE OF INFANTS, AND OF THE CONCEALMENT OF BIRTHS.

Causing miscarriage.

312. Whoever voluntarily causes a woman with child to miscarry shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and if the woman be quick with child, shall be punished with imprisonment of either description

* These words were substituted for the words "and shall also be liable to fine" by Act I of 1904, S. 27.

for a term which may extend to seven years, and shall also be liable to fine.

Explanation.—A woman who causes herself to miscarry, is within the meaning of this section.

Causing miscarriage without woman's consent.

313. Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Death caused by an act done with intent to cause miscarriage.

314. Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description, for a term which may extend to ten years, and shall also be liable to fine;

If act done without woman's consent.

and if the act is done without the consent of the woman, shall be punished either with transportation for life, or with the punishment abovementioned.

Explanation.—It is not essential to this offence that the offender should know that the act is likely to cause death.

Act done with intent to prevent a child being born alive, or to cause it to die after birth.

315. Whoever, before the birth of any child, does any act with the intention of thereby preventing that child from being born alive, or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

Causing death of a quick unborn child by an act amounting to culpable homicide.

316. Whoever does any act under such circumstances, that if he thereby caused death, he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Illustration.

A, knowing that he is likely to cause the death of a pregnant woman, does an act which, if it caused the death of the woman, would amount to culpable homicide. The woman is injured but does not die; but the death of an

unborn quick child with which she is pregnant is thereby caused. A is guilty of the offence defined in this section.

Exposure and abandonment of a child under twelve years by parent or person having care of it.

317. Whoever being the father or mother of a child under the age of twelve years, or having the care of such child shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation.—This section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child die in consequence of the exposure.

Concealment of birth by secret disposal of dead body.

318. Whoever, by secretly burying or otherwise disposing of the dead body of a child, whether such child die before or after or during its birth, intentionally conceals or endeavours to conceal the birth of such child, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

OF HURT.

Hurt.

319. Whoever causes bodily pain, disease, or infirmity to any person, is said to cause hurt.

Grievous hurt.

320. The following kinds of hurt only are designated as "grievous":—

First.—Emasculation.

Secondly.—Permanent privation of the sight of either eye.

Thirdly.—Permanent privation of the hearing of either ear.

Fourthly.—Privation of any member or joint.

Fifthly.—Destruction or permanent impairing of the powers of any member or joint.

Sixthly.—Permanent disfiguration of the head or face.

Seventhly.—Fracture or dislocation of a bone or tooth.

Eighthly.—Any hurt which endangers life or which causes the sufferer to be, during the space of twenty days, in severe bodily pain, or unable to follow his ordinary pursuits.

Voluntarily causing hurt.

321. Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge

that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt".

Voluntarily causing grievous hurt.

322. Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said "voluntarily to cause grievous hurt."

Explanation.—A person is not said voluntarily to cause grievous hurt, except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt, if intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

Illustration.

A, intending or knowing himself to be likely permanently to disfigure Z's face, gives Z a blow which does not permanently disfigure Z's face, but which causes Z to suffer severe bodily pain for the space of twenty days. A has voluntarily caused grievous hurt.

Punishment for voluntarily causing hurt.

323. Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Voluntarily causing hurt by dangerous weapons or means.

324. Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing, or cutting, or any instrument, which used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for voluntarily causing grievous hurt.

325. Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a

term which may extend to seven years, and shall also be liable to fine.

Voluntarily causing grievous hurt by dangerous weapons or means.

326. Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing, or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing hurt to extort property or to constrain to an illegal act.

327. Whoever voluntarily causes hurt, for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything which is illegal or which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Causing hurt by means of poison, etc., with intent to commit an offence.

328. Whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug, or other thing, with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence, or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing grievous hurt to extort property or to constrain to an illegal act.

329. Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything that is illegal or which may facilitate the commission of an offence, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Sections 330-332.

Voluntarily causing hurt to extort confession or to compel restoration of property.

330. Whoever voluntarily causes hurt, for the purpose of extorting from the sufferer or any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer, to restore or to cause the restoration of any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Illustrations.

(*a*) A, a police officer, tortures Z in order to induce Z to confess that he committed a crime. A is guilty of an offence under this section.

(*b*) A, a police officer, tortures B to induce him to point out where certain stolen property is deposited. A is guilty of an offence under this section.

(*c*) A, a revenue officer, tortures Z in order to compel him to pay certain arrears of revenue due from Z. A is guilty of an offence under this section.

(*d*) A, a zamindar, tortures a raiyat in order to compel him to pay his rent. A is guilty of an offence under this section.

Voluntarily causing grievous hurt to extort confession or to compel restoration of property.

331. Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer or any person interested in the sufferer any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security, or to satisfy and claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing hurt to deter public servant from his duty.

332. Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of any

thing done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Voluntarily causing grievous hurt to deter public servant from his duty.

333. Whoever voluntarily causes grievous hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing hurt on provocation.

334. Whoever voluntarily causes hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Causing grievous hurt on provocation.

335. Whoever* [voluntarily] causes grievous hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to four years, or with fine which may extend to two thousand rupees, or with both.

Explanation.—The last two sections are subject to the same provisos as Exception 1, section 300.

Punishment for act which endangers life or the personal safety of others.

336. Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both.

Causing hurt by an act which endangers life or the personal safety of others.

337. Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which

* This word was inserted by Act I of 1904, S. 28.

may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Causing grievous hurt by an act which endangers life or the personal safety of others.

338. Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

OF WRONGFUL RESTRAINT AND WRONGFUL CONFINEMENT.

Wrongful restraint.

339. Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

Exception.--The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section.

Illustration.

A obstructs a path along which Z has a right to pass, A not believing in good faith that he has a right to stop the path. Z is thereby prevented from passing. A wrongfully restrains Z.

Wrongful confinement.

340. Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said "wrongfully to confine" that person.

Illustrations.

(*a*) A causes Z to go within a walled space, and locks Z in. Z is thus prevented from proceeding in any direction beyond the circumscribing line of wall. A wrongfully confines Z.

(*b*) A places men with fire-arms at the outlets of a building and tells Z that they will fire at Z if Z attempts to leave the building. A wrongfully confines Z.

Punishment for wrongful restraint.

341. Whoever wrongfully restrains any person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

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Punishment for wrongful confinement.

342. Whoever wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Wrongful confinement for three or more days.

343. Whoever wrongfully confines any person for three days, or more, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Wrongful confinement for ten or more days.

344. Whoever wrongfully confines any person for ten days, or more, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Wrongful confinement of person, for whose liberation a writ has been issued.

345. Whoever keeps any person in wrongful confinement, knowing that a writ for the liberation of that person has been duly issued, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to any term of imprisonment to which he may be liable under any other section of this Code.

Wrongful confinement in secret.

346. Whoever wrongfully confines any person in such a manner as to indicate an intention that the confinement of such person may not be known to any person interested in the person so confined, or to any public servant, or that the place of such confinement may not be known to or discovered by any such person or public servant as hereinbefore mentioned, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to any other punishment to which he may be liable for such wrongful confinement.

Wrongful confinement for the purpose of extorting property or constraining to an illegal act.

347. Whoever wrongfully confines any person for the purpose of extorting from the person confined, or from any person interested in the person confined, any property or valuable security, or of constraining the person confined or any person interested in such person to do anything illegal, or to give any information which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Wrongful confinement for the purpose of extorting confession or of compelling restoration of property.

348. Whoever wrongfully confines any person for the purpose of extorting from the person confined or any person interested in the person confined, any confession or any information which may lead to the detection of an offence or misconduct or for the purpose of constraining the person confined or any person interested in the person

confined, to restore or to cause the restoration of any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

OF CRIMINAL FORCE AND ASSAULT.

Force.

349. A person is said to use force to another if he causes motion, change of motion, or cessation of motion to the other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of the other's body, or with anything which the other is wearing or carrying, or with anything so situated that such contact affects the other's sense of feeling: provided that the person causing the motion, or change of motion, or cessation of motion causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described:—

First.—By his own bodily power.

Secondly.—By disposing any substance in such a manner that the motion, or change or cessation of motion takes place without any further act on his part, or on the part of any other person.

Thirdly.—By inducing any animal to move, to change its motion, or to cease to move.

Criminal force.

350. Whoever intentionally uses force to any person without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to the other.

Illustrations.

(*a*) Z is sitting in a moored boat on a river. A unfastens the moorings, and thus intentionally causes the boat to drift down the stream. Here A intentionally causes motion to Z, and he does this by disposing substances in such a manner that the motion is produced without any other act on any person's part. A has therefore

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intentionally used force to Z; and if he has done so without Z's consent, in order to the committing of any offence or intending or knowing it to be likely that this use of force will cause injury, fear, or annoyance to Z, A has used criminal force to Z.

(*b*) Z is riding in a chariot. A lashes Z's horses, and thereby causes them to quicken their pace. Here A has caused change of motion to Z by inducing animals to change their motion. A has therefore used force to Z; and if A has done this without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy Z, A has committed criminal force to Z.

(*c*) Z is riding in a palanquin. A intending to rob Z, seizes the pole and stops the palanquin. Here A has caused cessation of motion to Z, and he has done this by his own bodily power. A has therefore used force to Z; and as A has acted thus intentionally, without Z's consent, in order to the commission of an offence. A has used criminal force to Z.

(*d*) A intentionally pushes against Z in the street. Here A has by his own bodily power moved his own person so as to bring it into contact with Z. He has therefore intentionally used force to Z, and if he has done so without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy Z, he has used criminal force to Z.

(*e*) A throws a stone, intending or knowing it to be likely that the stone will be thus brought into contact with Z, or with Z's clothes, or with something carried by Z, or that it will strike water, and dash up the water against Z's clothes, or something carried by Z.

Here, if the throwing of the stone produces the effect of causing any substance to come into contact with Z, or Z's clothes, A has used force to Z; and if he did so without Z's consent, intending thereby to injure, frighten or annoy Z, he has used criminal force to Z.

(*f*) A intentionally pulls up a woman's veil. Here A intentionally uses force to her; and if he does so without her consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy her, he has used criminal force to her.

(*g*) Z is bathing. A pours into the bath, water which he knows to be boiling. Here A intentionally, by

his own bodily power, causes such motion in the boiling water as brings that water into contact with Z, or with other water so situated that such contact must affect Z's sense of feeling; A has therefore intentionally used force to Z; and if he has done this without Z's consent, intending or knowing it to be likely that he may thereby cause injury, fear, or annoyance to Z, A has used criminal force to Z.

(*h*) A incites a dog to spring upon Z, without Z's consent. Here, if A intends to cause injury, fear or annoyance to Z, he uses criminal force to Z.

Assault.

351. Whoever makes any gesture, or any preparation, intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

Explanation.—Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.

Illustrations.

(*a*) A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z. A has committed an assault.

(*b*) A begins to unloose the muzzle of a ferocious dog, intending or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z.

(*c*) A takes up a stick, saying to Z, "I will give you a beating." Here, though the words used by A could in no case amount to an assault, and though the mere gesture, unaccompanied by any other circumstances, might not amount to an assault, the gesture explained by the words may amount to an assault.

Punishment for using criminal force otherwise than on grave provocation.

352. Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Explanation.—Grave and sudden provocation will not mitigate the punishment for an offence under this section, if the provocation is sought or voluntarily provoked by the offender as an excuse for the offence; or

if the provocation is given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant; or

if the provocation is given by anything done in the lawful exercise of the right of private defence.

Whether the provocation was grave and sudden enough to mitigate the offence, is a question of fact.

Using criminal force to deter a public servant from discharge of his duty.

353. Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assault or use of criminal force to a woman with intent to outrage her modesty.

354. Whoever assaults or uses criminal force to any woman, intending to outrage, or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assault or criminal force with intent to dishonour a person, otherwise than or grave provocation.

355. Whoever assaults or uses criminal force to any person, intending thereby to dishonour that person, otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assault or criminal force in attempt to commit theft of property carried by a person.

356. Whoever assaults or uses criminal force to any person, in attempting to commit theft on any property which that person is then wearing or carrying, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assault or criminal force in attempt wrongfully to confine person.

357. Whoever assaults or uses criminal force to any person, in attempting wrongfully to confine that person, shall be punished with imprisonment of either description for a term which may extend to one year or with fine which may extend to one thousand rupees, or with both.

Assaulting or using criminal force on grave provocation.

358. Whoever assaults or uses criminal force to any person on grave and sudden provocation given by that person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Explanation.—The last section is subject to the same explanation as section 352.

OF KIDNAPPING, ABDUCTING, SLAVERY, AND FORCED LABOUR.

Kidnapping.

359. Kidnapping is of two kinds; kidnapping from British India, and kidnapping from lawful guardianship.

Kidnapping from British India.

360. Whoever conveys any person beyond the limits of British India without the consent of that person, or of some person legally authorized to consent on behalf of that person, is said to kidnap that person from British India.

Kidnapping from lawful guardianship.

361. Whoever takes or entices any minor under fourteen years of age, if a male, or under sixteen years of age, if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Explanation.—The words "lawful guardian" in this section include any person lawfully entrusted with the care or custody of such minor or other person.

Exception.—This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child unless such act is committed for an immoral or unlawful purpose.

Abduction.

362. Whoever by force compels, or by any deceitful means induces any person to go from any place, is said to abduct that person.

Punishment for kidnapping.

363. Whoever kidnaps any person from British India, or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Kidnapping or abducting in order to murder.

364. Whoever kidnaps or abducts any person, in order that such person may be murdered, or may be so disposed of as to be put in danger of being murdered, shall

Sections 365-366-B.

be punished with transportation for life, or rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine.

Illustrations.

(*a*) A kidnaps Z from British India, intending or knowing it to be likely that Z may be sacrificed to an idol. A has committed the offence defined in this section.

(*b*) A forcibly carries or entices B away from his home, in order that B may be murdered. A has committed the offence defined in this section.

Kidnapping or abducting, with intent secretly and wrongfully to confine a person.

365. Whoever kidnaps of abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall be liable to fine.

Kidnapping or abducting a woman to compel her marriage, etc.

366. Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine,

* and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid.

Procuration of minor girl.

† **366-A.** Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person, shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.

Importation of girl from foreign country.

366-B. Whoever imports into Mysore from any country outside Mysore any girl under the age of twenty-one years with intent that she may be or knowing it to

* This paragraph was added by Act VIII of 1928, section 3.

† Sections 366-A and 366-B were inserted by Act VIII of 1928, section 4.

be likely that she will be, forced or seduced to illicit intercourse with another person,

and whoever with such intent or knowledge imports into Mysore from any State or province in India any such girl who has with the like intent or knowledge been imported into India whether by himself or by another person,

shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.

Kidnapping or abducting, in order to subject a person to grievous hurt, slavery, etc.

367. Whoever kidnaps or abducts any person, in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected to grievous hurt, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Wrongfully concealing or keeping in confinement a kidnapped person.

368. Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose as that with or for which he conceals or detains such person in confinement.

Kidnapping or abducting child under ten years, with intent to steal moveable property from the person of such child.

369. Whoever kidnaps or abducts any child under the age of ten years, with intention of taking dishonestly any moveable property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Buying or disposing of any person as a slave.

370. Whoever imports, exports, removes, buys, sells, or disposes of, any person as a slave, or accepts, receives, or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Habitual dealing in slaves.

371. Whoever habitually imports, exports, removes, buys, sells, traffics, or deals in slaves, shall be punished with transportation for life, or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

Sections 372-373.

Selling of any person for purpose of prostitution, etc.

372. Whoever sells, lets to hire, or otherwise disposes of any * [person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be] employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

† [*Explanation* 1.—When a female under the age of eighteen years is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution.

Explanation 2.—For the purposes of this section "illicit intercourse" means sexual intercourse between persons not united by marriage or by any union or tie which, though not amounting to a marriage, is recognised by the personal law or custom of the community to which they belong or, where they belong to different communities, of both such communities, as constituting between them a *quasi*-marital relation.]

Buying of any person for purposes of prostitution.

373. Whoever buys, hires, or otherwise obtains possession of any * [person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose or knowing it to be likely that such person will at any age be] employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

‡ [*Explanation* 1.—Any prostitute, or any person keeping or managing a brothel, who buys, hires, or otherwise obtains possession of a female under the age of eighteen years shall, until the contrary is proved, be presumed to

* These words were substituted for the original words by Act VIII of 1928 section 5.

† These Explanatio ns were added by Act VIII of 1928, section 6.

‡ These Explanations were added by Act VIII of 1928, section 7.

have obtained possession of such female with the intent that she shall be used for the purpose of prostitution.

Explanation 2.—Illicit intercourse has the same meaning as in section 372.]

Unlawful compulsory labour.

374. Whoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

OF RAPE.

Rape.

375. A man is said to commit "rape," who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions:—

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her in fear of death, or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.—With or without her consent, when she is under * fourteen years of age.

Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.—Sexual intercourse by a man with his own wife, the wife not being under * fourteen years of age, is not rape.

Punishment for rape.

376. Whoever commits rape shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

OF UNNATURAL OFFENCES.

Unnatural offences.

377. Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with transportation for life, or with

* The word "fourteen" was substituted for "twelve" by Act IX of 1937 which was amended by section 29, Act I of 1891, where the word "twelve" was substituted for the word "ten" in the original Act.

Section 378.

imprisonment of either description for a term which may extend to ten years, and shall also be liabe to fine.

Explanation.—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

CHAPTER XVII.

OFFENCES AGAINST PROPERTY.

OF THEFT.

Theft.

378. Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

Explanation 1.—A thing so long as it is attached to the earth, not being moveable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2.—A moving effected by the same act which effects the severance may be a theft.

Explanation 3.—A person is said to cause a thing to move by removing an obstacle which prevented it from moving, or by separating it from any other thing, as well as by actually moving it.

Explanation 4.—A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5.—The consent mentioned in the definition may be express or implied and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

Illustrations.

(*a*) A cuts down a tree on Z's ground with the intention of dishonestly taking the tree out of Z's possession without Z's consent. Here, as soon as A has severed the tree, in order to such taking, he has committed theft.

(*b*) A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it. Here, if A's intention be dishonestly to take the dog out of Z's possession without

Z's consent, A has committed theft as soon as Z's dog has begun to follow A.

(*c*) A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.

(*d*) A, being Z's servant, and entrusted by Z with the care of Z's plate, dishonestly runs away with the plate without Z's consent. A has committed theft.

(*e*) Z, going on a journey, entrusts his plate to A, the keeper of a warehouse, till Z shall return. A carries the plate to a goldsmith and sells it. Here the plate was not in Z's possession. It could not therefore be taken out of Z's possession, and A has not committed theft though he may have committed criminal breach of trust.

(*f*) A finds a ring belonging to Z on a table in the house which Z occupies. Here the ring is in Z's possession, and if A dishonestly removes it, A commits theft.

(*g*) A finds a ring lying on the high-road, not in the possession of any person. A by taking it commits no theft, though he may commit criminal misappropriation of property.

(*h*) A sees a ring belonging to Z lying on a table in Z's house. Not venturing to misappropriate the ring immediately for fear of search and detection, A hides the ring in a place where it is highly improbable that it will ever be found by Z, with the intention of taking the ring from the hiding place and selling it when the loss is forgotten. Here A, at the time of first moving the ring, commits theft.

(*i*) A delivers his watch to Z, a jeweller, to be regulated. Z carries it to his shop. A, not owing to the jeweller any debt for which the jeweller might lawfully detain the watch as a security, enters the shop openly, takes his watch by force out of Z's hand, and carries it away. Here A, though he may have committed criminal trespass and assault, has nor committed theft, inasmuch as what he did was not done dishonestly.

(*j*) If A owes money to Z for repairing the watch, and if Z retains the watch lawfully as a security for the debt, and A takes the watch out of Z's possession, with the intention of depriving Z of the property as a security for

his debt, he commits theft, inasmuch as he takes it dishonestly.

(*k*) Again if A, having pawned his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he had borrowed on the watch, he commits theft, though the watch is his own property, inasmuch as he takes it dishonestly.

(*l*) A takes an article belonging to Z out of Z's possession, without Z's consent, with the intention of keeping it until he obtains money from Z as a reward for its restoration. Here A takes dishonestly. A has therefore committed theft.

(*m*) A being on friendly terms with Z, goes into Z's library in Z's absence, and takes away book without Z's express consent, for the purpose merely of reading it, and with the intention of returning it. Here, it is probable that A may have conceived that he had Z's implied consent to use Z's book. If this was A's impression, A has not committed theft.

(*n*) A asks charity from Z's wife. She gives A money, food and clothes, which A knows to belong to Z, her husband. Here, it is probable that A may conceive that Z's wife is authorised to give away alms. If this was A's impression, A has not committed theft.

(*o*) A is the paramour of Z's wife. She gives a valuable property, which A knows to belong to her husband Z, and to be such property as she has not authority from Z to give. If A takes the property dishonestly, he commits theft.

(*p*) A, in good faith, believing property belonging to Z to be A's own property, takes that property out of B's possession. Here, A does not take dishonestly, and he does not commit theft.

Punishment for theft.

379. Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine or with both.

Theft in dwelling house, etc.

380. Whoever commits theft in any building, tent, or vessel, which building, tent, or vessel, is used as a human dwelling, or for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Sections 381-383.

Theft by clerk or servant of property in possession of master.

381. Whoever, being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Theft after preparation made for causing death or hurt, in order to the committing of the theft.

382. Whoever commits theft, having made preparation for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, to any person, in order to the committing of such theft, or in order to the effecting of his escape after the committing of such theft, or in order to the retaining of property taken by such theft, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Illustrations.

(*a*) A commits theft on proprety in Z's possession; and while committing this theft, he has a loaded pistol under his garment, having provided this pistol for the purpose of hurting Z in case Z should resist. A has committed the offence defined in this section.

(*b*) A picks Z's pocket, having posted several of his companions near him, in order that they may restrain Z, if Z should perceive what is passing and should resist, or should attempt to apprehend A. A has committed the offence defined in this section.

OF EXTORTION.

Extortion.

383. Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person, any property or valuable security, or anything signed or sealed, which may be converted into a valuable security, commits "extortion".

Illustrations.

(*a*) A threatens to publish a defamatory libel concerning Z, unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

(*b*) A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z to pay certain moneys to A,

Z signs and delivers the note. A has committed extortion.

(*c*) A threatens to send club-men to plough up Z's field, unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.

(*d*) A, by putting Z, in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security, A has committed extortion.

Punishment for extortion.

384. Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Putting person in fear of injury, in order to commit extortion.

385. Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Extortion by putting a person in fear of death or grievous hurt.

386. Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Putting person in fear of death or of grievous hurt, in order to commit extortion.

387. Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Extortion by threat of accusation of an offence, punishable with death, or transportation, etc.

388. Whoever commits extortion by putting any person in fear of an accusation against that person or any other, of having committed or attempted to commit any offence, punishable with death, or with transportation for life, or with imprisonment for a term which may extend to ten years, or of having attempted to induce any other person to commit such offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if the offence be one punishable under section 377, may be punished with transportation for life.

Sections 389-390.

Putting person in fear of accusation of offence, in order to commit extortion.

389. Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of an accusation, against that person or any other, of having committed or attempted to commit, an offence punishable with death, or with transportation for life, or with imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if the offence be punishable under section 377, may be punished with transportation for life.

OF ROBBERY AND DACOITY.

Robbery.

When theft is robbery.

390. In all robbery, there is either theft or extortion.

Theft is "robbery", if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt, or wrongful restraint, or fear of instant death, or of instant hurt, or of instant wrongful restraint.

When extortion is robbery.

Extortion is "robbery", if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person, or to some other person, and by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Explanation.—The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

Illustrations.

(*a*) A holds Z down, and fraudulently takes Z's money and jewels from Z's clothes without Z's consent. Here A has committed theft, and in order to the committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.

(*b*) A meets Z on the high road, shows a pistol, and demands Z's purse. Z, in consequence, surrenders his purse. Here A has extorted the purse from Z by putting him in fear of instant hurt, and being at the time of committing the extortion in his presence. A has therefore committed robbery.

(*c*) A meets Z and Z's child on the high road. A takes the child, and threatens to fling it down a precipice unless Z delivers his purse. Z, in consequence, delivers his purse. Here A has extorted the purse from Z, by causing Z to be in fear of instant hurt to the child who is there present. A has therefore committed robbery on Z.

(*d*) A obtains property from Z by saying—"Your child is in the hands of my gang, and will be put to death unless you send us ten thousand rupees". This is extortion, and punishable as such; but it is not robbery unless Z is put in fear of the instant death of his child.

Dacoity.

391. When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting, or aiding, is said to commit "dacoity".

Punishment for robbery.

392. Whoever commits robbery, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.

Attempt to commit robbery.

393. Whoever attempts to commit robbery, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Voluntarily causing hurt in committing robbery.

394. If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Punishment for dacoity.

395. Whoever commits dacoity shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Dacoity with murder.

396. If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or transportation for life, or rigorous

imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Robbery or dacoity, with attempt to cause death or grievous hurt.

397. If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

Attempt to commit robbery or dacoity when armed with deadly weapon.

398. If, at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, the imprisonment with which such offender shall be punished shall not be less than seven years.

Making preparation to commit dacoity.

399. Whoever makes any preparation for committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Punishment for belonging to a gang of dacoits.

400. Whoever, at any time after the passing of this Act, shall belong to a gang of persons associated for the purpose of habitually committing dacoity, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Punishment for belonging to a wandering gang of thieves.

401. Whoever, at any time after the passing of this Act, shall belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, and not being a gang of thugs or dacoits shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Assembling for purpose of committing dacoity.

402. Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

OF CRIMINAL MISAPPROPRIATION OF PROPERTY.

Dishonest misappropriation of property.

403. Whoever dishonestly misappropriates or converts to his own use any moveable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustrations.

(*a*) A takes property belonging to Z out of Z's possession, in good faith, believing, at the time when he

Section 403.

takes it, that the property belongs to himself. A is not guilty of theft; but if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section.

(*b*) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent. Here, if A was under the impression that he had Z's implied consent to take the book for the purpose of reading it, A has not committed theft. But if A afterwards sells the book for his own benefit, he is guilty of an offence under this section.

(*c*) A and B being joint owners of a horse, A takes the horse out of B's possession, intending to use it. Here, as A has a right to use the horse, he does not dishonestly misappropriate it. But, if A sells the horse and appropriates the whole proceeds to his own use, he is guilty of an offence under this section.

Explanation 1.—A dishonest misappropriation for a time only is a misappropriation within the meaning of this section.

Illustration.

A finds a Government Promissory Note belonging to Z, bearing a blank endorsement. A, knowing that the note belongs to Z, pledges it with a banker as a security for a loan, intending at a future time to restore it to Z. A has committed an offence under this section.

Explanation 2.—A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for, or of restoring it to, the owner, does not take or misappropriate it dishonestly, and is not guilty of an offence; but he is guilty of the offence above defined, if he appropriates it to his own use, when he knows or has the means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner, and has kept the property a reasonable time to enable the owner to claim it.

What are reasonable means, or what is a reasonable time in such a case, is a question of fact.

It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it: it is sufficient if, at the time of appropriating it, he does not believe it to be his own property, or in good faith believes that the real owner cannot be found.

Section 404.

Illustrations.

(*a*) A finds a rupee on the high road, not knowing to whom the rupee belongs. A picks up the rupee. Here A has not committed the offence in this section.

(*b*) A finds a letter on the high road, containing a bank note. From the direction and contents of the letter, he learns to whom the note belongs. He appropriates the note. He is guilty of an offence under this section.

(*c*) A finds a cheque payable to bearer. He can form no conjecture as to the person who has lost the cheque. But the name of the person who has drawn the cheque appears. A knows that this person can direct him to the person in whose favour the cheque was drawn. A appropriates the cheque without attempting to discover the owner. He is guilty of an offence under this section.

(*d*) A sees Z drop his purse with money in it. A picks up the purse with the intention of restoring it to Z, but afterwards appropriates it to his own use. A has committed an offence under this section.

(*e*) A finds a purse with money not knowing to whom it belongs; he afterwards discovers that it belongs to Z, and appropriates it to his own use. A is guilty of an offence under this section.

(*f*) A finds a valuable ring not knowing to whom it belongs. A sells it immediately without attempting to discover the owner. A is guilty of an offence under this section.

Dishonest misappropriation of property possessed by a deceased person at the time of his death.

404. Whoever dishonestly misappropriates or converts to his own use property, knowing that such property was in the possession of a deceased person at the time of that person's decease, and has not since been in the possession of any person legally entitled to such possession, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine, and if the offender at the time of such person's decease was employed by him as a clerk or servant, the imprisonment may extend to seven years.

Illustration.

Z dies in possession of furniture and money. His servant A, before the money comes into the possession of any person entitled to such possession, dishonestly

Section 405.

misappropriates it. A has committed the offence defined in this section.

OF CRIMINAL BREACH OF TRUST.

Criminal breach of trust.

405. Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

Illustrations.

(*a*) A, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriates them to his own use. A has committed criminal breach of trust.

(*b*) A is a warehouse-keeper. Z, going on a journey, entrusts his furniture to A under a contract that it shall be returned on payment of a stipulated sum for warehouse room. A dishonestly sells the goods. A has committed criminal breach of trust.

(*c*) A, residing in Calcutta, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z that all sums remitted by Z to A shall be invested by A according to Z's direction. Z remits a lakh of rupees to A, with directions to A to invest the same in Company's paper. A dishonestly disobeys the directions, and employs the money in his own business. A has committed criminal breach of trust.

(*d*) But if A, in the last illustration, not dishonestly but in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions, and buys shares in the Bank of Bengal for Z, instead of buying Company's paper, here, though Z should suffer loss, and should be entitled to bring a civil action against A on account of that loss, yet A not having acted dishonestly, has not committed criminal breach of trust.

(*e*) A, a revenue officer, is entrusted with public money, and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.

(*f*) A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A hat committed criminal breach of trust.

Punishment for criminal breach of trust.

406. Whoever commits criminal breach of trust, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Criminal breach of trust by a carrier, etc.

407. Whoever, being entrusted with property as a carrier, wharfinger, or warehouse-keeper, commits criminal breach of trust in respect of such property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Criminal breach of trust by a clerk or servant.

408. Whoever, being a clerk or servant, or employed as a clerk or servant, and being in any manner entrusted in such capacity, with property or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Criminal breach of trust by public servant, or by banker, merchant, or agent.

409. Whoever, being in any manner entrusted with property, or with any dominion over property, in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

OF RECEIVING STOLEN PROPERTY.

Stolen property.

410. Property, the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated, or in respect of which* criminal breach of trust has been

* The words "the offence of" were repealed by Act I of 1914, S. 30.

committed, is designated as " stolen property", * [whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without Mysore]. But if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.

Dishonestly receiving stolen property.

411. Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Dishonestly receiving property stolen in the commission of a dacoity.

412. Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly receives from a person, whom he knows or has reason to believe to belong or to have belonged to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Habitually dealing in stolen property.

413. Whoever habitually receives or deals in property, which he knows or has reason to believe to be stolen property, shall be punished with transportation for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Assisting in concealment of stolen property.

414. Whoever voluntarily assists in concealing or disposing of or making away with property, which he knows or has reason to believe to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

OF CHEATING.

Cheating.

415. Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation, or property, is said to "cheat".

* These words were inserted by Act I of 1904, S. 30.

Section 415.

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.

Illustrations.

(*a*) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.

(*b*) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.

(*c*) A, by exhibiting to Z a false sample of an article intentionally deceives Z into believing that the article corresponds with the sample and thereby dishonestly induces Z to buy and pay for the article. A cheats.

(*d*) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonoured, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.

(*e*) A, by pledging as diamonds, articles which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.

(*f*) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him, and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.

(*g*) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

(*h*) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.

Sections 416-420.

(*i*) A sells and conveys an estate to B. A knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z, without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z. A cheats.

Cheating by personation.

416. A person is said to " cheat by personation ", if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

Explanation.—The offence is committed whether the individual personated is a real or imaginary person.

Illustrations.

(*a*) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.

(*b*) A cheats by pretending to be B, a person who is deceased. A cheats by personation.

Punishment for cheating.

417. Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Cheating with knowledge that wrongful loss may be thereby caused to a person whose interest the offender is bound to protect.

418. Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound, either by law, or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for cheating by personation.

419. Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Cheating and dishonestly inducing a delivery of property.

420. Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Sections 421-425.

OF FRAUDULENT DEEDS AND DISPOSITIONS OF PROPERTY.

Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors.

421. Whoever dishonestly or fraudulently removes, conceals, or delivers to any person, or transfers or causes to be transferred to any person, without adequate consideration, any property, intending thereby to prevent, or knowing it to be likely that he will thereby prevent the distribution of that property according to law among his creditors or the creditors of any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Dishonestly or fraudulently preventing from being made available for his creditors a debt or demand due to the offender.

422. Whoever dishonestly or fraudulently prevents any debt or demand due to himself or to any other person from being made available according to law for payment of his debts or the debts of such other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Dishonest or fraudulent execution of deed of transfer containing a false statement of consideration.

423. Whoever dishonestly or fraudulently signs, executes or becomes a party to any deed or instrument which purports to transfer or subject to any charge any property, or any interest therein, and which contains any false statement relating to the consideration for such transfer or charge, or relating to the person or persons for whose use or benefit it is really intended to operate, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Dishonest or fraudulent removal or concealment of property.

424. Whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

OF MISCHIEF.

Mischief.

425. Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property, or in the

situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits " mischief ".

Explanation 1.—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2.—Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

Illustrations.

(*a*) A voluntarily burns a valuable security belonging to Z, intending to cause wrongful loss to Z. A has committed mischief.

(*b*) A introduces water into an ice house belonging to Z, and thus causes the ice to melt, intending wrongful loss to Z. A has committed mischief.

(*c*) A voluntarily throws into a river a ring belonging to Z, with the intention of thereby causing wrongful loss to Z. A has committed mischief.

(*d*) A knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to Z, destroys those effects, with the intention of thereby preventing Z from obtaining satisfaction of the debt, and of thus causing damage to Z. A has committed mischief.

(*e*) A, having insured a ship, voluntarily causes the same to be cast away with the intention of causing damage to the underwriters. A has committed mischief.

(*f*) A, causes a ship to be cast away, intending thereby to cause damage to Z who has lent money on bottomry on the ship. A has committed mischief.

(*g*) A, having joint property with Z in a horse, shoots the horse, intending thereby to cause wrongful loss to Z. A has committed mischief.

(*h*) A, causes cattle to enter upon a field belonging to Z, intending to cause and knowing that he is likely to cause damage to Z's crop. A has committed mischief.

246. Whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both. Punishment for committing mischief.

Sections 427-433.

Committing mischief and thereby causing damage to the amount of 50 rupees.

427. Whoever commits mischief and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Mischief by killing or maiming any animal of the value of 10 rupees.

428. Whoever commits mischief, by killing, poisoning maiming, or rendering useless, any animal or animals of the value of ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Mischief by killing or maiming cattle, etc., or any animal of the value of 50 rupees.

429. Whoever commits mischief by killing, poisoning, maiming, or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow or ox, whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by injury to works of irrigation or by wrongfully diverting water.

430. Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, a diminution of the supply of water for agricultural purposes, or for food or drink for human beings or for animals which are property, or for cleanliness, or for carrying on any manufacture, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by injury to public road, bridge, or river.

431. Whoever commits mischief by doing any act which renders or which he knows to be likely to render any public road, bridge, navigable river, or navigable channel, natural or artificial, impassable or less safe for travelling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by causing inundation or obstruction to public drainage attended with damage.

432. Whoever commits mischief by doing any act which causes or which he knows to be likely to cause an inundation or an obstruction to any public drainage attended with injury or damage, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by destroying or moving or rendering less useful a light-house or sea-mark, or by exhibiting false lights.

433. Whoever commits mischief by destroying or moving any light-house or other light used as a sea-mark, or any sea-mark or buoy or other thing placed as a guide for navigators, or by any act which renders any such light-house, sea-mark, buoy or other such thing as aforesaid

less useful as a guide for navigators, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Mischief by destroying or moving, etc. a land-mark fixed by public authority.

434. Whoever commits mischief by destroying or moving any land-mark fixed by the authority of a public servant, or by any act which renders such land-mark less useful as such, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Mischief by fire or explosive substance with intent to cause damage to amount of 100 rupees.

435. Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, damage to any property to the amount of one hundred rupees or upwards, * [or (where the property is agricultural produce) ten rupees or upwards], shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Mischief by fire or explosive substance with intent to destroy a house, etc.

436. Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship, or as a human dwelling or as a place for the custody of property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

M chief with intent to destroy or make unsafe a decked vessel or a vessel of 20 tons burden.

437. Whoever commits mischief to any decked vessel or any vessel of a burden of twenty tons or upwards, intending to destroy or render unsafe, or knowing it to be likely that he will thereby destroy or render unsafe that vessel, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Punishment for the mischief described in the last section when committed by fire or any explosive substance.

438. Whoever commits or attempts to commit by fire or any explosive substance, such mischief as is described in the last preceding section, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Punishment for intentionally running vessel aground or ashore with intent to commit theft, etc.

439. Whoever intentionally runs any vessel aground or ashore, intending to commit theft of any property contained therein, or to dishonestly misappropriate any such property, or with intent that such theft or misappropri-

*These were inserted by Act I of 1904, S. 31.

ation of property may be committed, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Mischief committed after preparation made for causing death or hurt.

440. Whoever committs mischief, having made preparation for causing to any person death, or hurt, or wrongful restraint, or fear of death, or of hurt, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

OF CRIMINAL TRESPASS.

Criminal trespass.

441. Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property; or having lawfully entered into or upon such property, unlawfully remains therewith intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit "criminal trespass".

House-trespass.

442. Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel, used as a human dwelling, or any building used as a place for worship, or as a place for the custody of property, is said to commit "house-trespass".

Explanation.—The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass.

Lurking house-trespass.

443. Whoever commits house-trespass, having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent or vessel which is the subject of the trespass, is said to commit "lurking house-trespass".

Lurking house-trespass by night.

444. Whoever commits lurking house-trespass after sunset and before sunrise, is said to commit "lurking house-trespass by night".

House-breaking.

445. A person is said to commit "house-breaking" who commits house-trespass if he effects his entrance into the house or any part of it in any of the six ways hereinafter described; or if, being in the house or any part of it for the purpose of committing an offence, or, having committed an offence therein, he quits the house or any part of it in any of such six ways, that is to say:—

Section 445.

First.—If he enters or quits through a passage made by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass.

Secondly—If he enters or quits through any passage not intended by any person, other than himself or an abettor of the offence, for human entrance; or through any passage to which he has obtained access by scaling or climbing over any wall or building.

Thirdly.—If he enters or quits through any passage which he or any abettor of the house-trespass has opened, in order to the committing of the house-trespass by any means by which that passage was not intended by the occupier of the house to be opened.

Fourthly.—If he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass.

Fifthly.—If he effects his entrance or departure by using criminal force or committing an assault, or by threatening any person with assault.

Sixthly.—If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself or by an abettor of the house-trespass.

Explanation.—Any out-house, or building occupied with a house, and between which and such house there is an immediate internal communication, is part of the house within the meaning of this section.

Illustrations.

(*a*) A commits house-trespass by making a hole through the wall of Z's house, and putting his hand through the aperture. This is house-breaking.

(*b*) A commits house-trespass by creeping into a ship at a port-hole between decks. This is house-breaking.

(*c*) A commits house-trespass by entering Z's house through a window. This is house-breaking.

(*d*) A commits house-trespass by entering Z's house through the door, having opened a door which was fastened. This is house-breaking.

(*e*) A commits house-trespass by entering Z's house through the door, having lifted a latch by putting a wire through a hole in the door. This is house-breaking.

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(*f*) A finds the key of Z's house door, which Z had lost, and commits house-trespass by entering Z's house, having opened the door with that key. This is house-breaking.

(*g*) Z is standing in his door-way. A forces a passage by knocking Z down, and commits house-trespass by entering the house. This is house-breaking.

(*h*) Z, the door-keeper of Y, is standing in Y's door-way. A commits house-trespass by entering the house, having deterred Z from opposing him by threatening to beat him. This is house-breaking.

House-breaking by night.

446. Whoever commits house-breaking after sunset and before sunrise, is said to commit "house-breaking by night".

Punishment for criminal trespass.

447. Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Punishment for house-trespass.

448. Whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

House-trespass in order to the commission of an offence punishable with death.

449. Whoever commits house-trespass in order to the committing of any offence punishable with death, shall be punished with transportation for life, or with rigorous imprisonment for a term not exceeding ten years, and shall also be liable to fine.

House-trespass in order to the commision of an offence punishable with transportation for life.

450. Whoever commits house-trespass in order to the committing of any offence punishable with transportation for life, shall be punished with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

House-trespass in order to the commission of an offence punishable with imprisonment.

451. Whoever commits house-trespass in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to seven years.

House-trespass after preparation made for causing hurt to any person.

452. Whoever commits house-trespass, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or

of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Punishment for lurking house-trespass or house-breaking.

453. Whoever commits lurking house-trespass, or house-breaking, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

Lurking house-trespass or house-breaking in order to the commission of an offence punishable with imprisonment.

454. Whoever commits lurking, house-trespass or house-breaking, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to ten years.

Lurking house-trespass or house-breaking after preparation made for causing hurt to any person.

455. Whoever commits lurking house-trespass or house-breaking, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Punishment for lurking house-trespass or house-breaking by night.

456. Whoever commits lurking house-trespass by night, or house-breaking by night, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Lurking house-trespass or house-breaking by night, in order to the commission of an offence punishable with imprisonment.

457. Whoever commits lurking house-trespass by night, or house-breaking by night, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may extend to fourteen years.

Lurking house-trespass or house-breaking by night, after preparation made for causing hurt to any person.

458. Whoever commits lurking house-trespass by night, or house-breaking by night, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

Sections 459-464.

Grievous hurt caused whilst committing lurking house-trespass or house-breaking.

459. Whoever, whilst committing lurking house-trespass or house-breaking, causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

All persons jointly concerned in house-breaking, etc., to be punishable for death or grievous hurt caused by one of their number.

460. If, at the time of the committing of lurking house-trespass by night or house-breaking by night, any person guilty of such offence shall voluntarily cause or attempt to cause death or grievous hurt to any person, every person jointly concerned in committing such lurking house-trespass by night or house-breaking by night, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Dishonestly breaking open any closed receptacle containing or supposed to contain property.

461. Whoever dishonestly or with intent to commit mischief, breaks open or unfastens any closed receptacle which contains or which he believes to contain property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Punishment for same offence when committed by person entrusted with custody.

462. Whoever, being entrusted with any closed receptacle which contains or which he believes to contain property, without having authority to open the same dishonestly, or with intent to commit mischief, breaks open or unfastens that receptacle, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

CHAPTER XVIII.

OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY MARKS.

Forgery.

463. Whoever makes any false document or part of a document, with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

Making a false document.

464. A person is said to make a false document—

Section 464.

First.—Who dishonestly or fraudulently makes, signs seals, or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed, or executed by, or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, or executed, or at a time at which he knows that it was not made, signed, sealed, or executed; or

Secondly.—Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part thereof, after it has been made or executed either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly.—Who dishonestly or fraudulently causes any person to sign, seal, execute, or alter a document, knowing that such person, by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or the nature of the alteration.

Illustrations.

(*a*) A has a letter of credit upon B for rupees 10,000, written by Z. A, in order to defraud B, adds a cypher to the 10,000 and makes the sum 1,00,000, intending that it may be believed by B that Z so wrote the letter. A has committed forgery.

(*b*) A, without Z's authority, affixes Z's seal to a document, purporting to be a conveyance of an estate from Z to A, with the intention of selling the estate to B and thereby of obtaining from B the purchase money. A has committed forgery.

(*c*) A picks up a cheque on a banker signed by B, payable to bearer, but without any sum having been inserted in the cheque. A fraudulently fills up the cheque by inserting the sum of ten thousand rupees. A commits forgery.

(*d*) A leaves with B, his agent, a cheque on a banker, signed by A, without inserting the sum payable, and authorizes B to fill up the cheque by inserting a sum not exceeding ten thousand rupees for the purpose of

making certain payments. B fraudulently fills up the cheque by inserting the sum of twenty thousand rupees. B commits forgery.

(*e*) A draws a bill of exchange on himself in the name of B without B's authority, intending to discount it as a genuine bill with a banker, and intending to take up the bill on its maturity. Here, as A draws the bill with intent to deceive the banker by leading him to suppose that he had the security of B, and thereby to discount the bill, A is guilty of forgery.

(*f*) Z's will contains these words—"I direct that all my remaining property be equally divided between A, B and C." A dishonestly scratches out B's name, intending that it may be believed that the whole was left to himself and C. A has committed forgery.

(*g*) A endorses a Government promissory note and makes it payable to Z or his order by writing on the bill the words "Pay to Z or his order", and signing the endorsement. B dishonestly erases the words "pay to Z or his order," and thereby converts the special endorsement into a blank endorsement. B commits forgery.

(*h*) A sells and conveys an estate to Z. A afterwards, in order to defraud Z of his estate, executes a conveyance of the same estate to B, dated six months earlier than the date of the conveyance to Z, intending it to be believed that he had conveyed the estate to B before he conveyed it to Z. A has committed forgery.

(*i*) Z dictates his will to A. A intentionally writes down a different legatee from the legatee named by Z, and by representing to Z that he has prepared the will according to his instructions, induces Z to sign the will. A has committed forgery.

(*j*) A writes a letter and signs it with B's name without B's authority, certifying that A is a man of good character and in distressed circumstances from unforeseen misfortune, intending by means of such letter to obtain alms from Z and other persons. Here, as A made a false document in order to induce Z to part with property, A has committed forgery.

(*k*) A without B's authority writes a letter and signs it in B's name, certifying to A's character, intending thereby to obtain employment under Z. A has committed forgery, inasmuch as he intended to deceive Z by the

forged certificate, and thereby to induce Z to enter into an express or implied contract for service.

Explanation 1.—A man's signature of his own name may amount to forgery.

Illustrations.

(*a*) A signs his own name to a bill of exchange, intending that it may be believed that the bill was drawn by another person of the same name. A has committed forgery.

(*b*) A writes the word "accepted" on a piece of paper and signs with Z's name, in order that B may afterwards write on the paper a bill of exchange drawn by B upon Z and negotiate the bill as though it had been accepted by Z. A is guilty of forgery, and if B, knowing the fact, draws the bill upon the paper pursuant to A's intention, B is also guilty of forgery.

(*c*) A picks up a bill of exchange payable to the order of a different person of the same name. A endorses the bill in his own name, intending to cause it to be believed that it was endorsed by the person to whose order it was payable; here A has committed forgery.

(*d*) A purchases an estate sold under execution of a decree against B. B, after the seizure of the estate, in collusion with Z, executes a lease of the estate to Z at a nominal rent and for a long period, and dates the lease six months prior to the seizure, with intent to defraud A, and to cause it to be believed that the lease was granted before the seizure. B, though he executes the lease in his own name, commits forgery by antedating it.

(*e*) A, a trader, in anticipation of insolvency, lodges effects with B for A's benefit, and with intent to defraud his creditors, and in order to give a colour to the transaction, writes a promissory note binding himself to pay to B a sum for value received, and antedates the note, intending that it may be believed to have been made before A was on the point of insolvency. A has committed forgery under the first head of the definition.

Explanation 2.—The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that

the document was made by the person in his lifetime, may amount to forgery.

Illustration.

A draws a bill of exchange upon a fictitious person, and fraudulently accepts the bill in the name of such fictitious person with intent to negotiate it. A commits forgery.

Punishment for forgery.

465. Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Forgery of a record of a Court of Justice, or of a public register of births, etc.

466. Whoever forges a document, purporting to be a record or proceeding of or in a Court of Justice, or a register or birth, baptism, marriage, or burial, or a register kept by a public servant as such, or a certificate or document purporting to be made by a public servant in his official capacity, or an authority to institute or defend a suit, or to take any proceedings therein, or to confess judgment, or a power of attorney, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Forgery of a valuable security or will.

467. Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, moveable property or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any moveable property or valuable security, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Forgery for the purpose of cheating.

468. Whoever commits forgery, intending that the document forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Forgery for the purpose of harming the reputation of any person.

469. Whoever commits forgery, intending that the document forged shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description

for a term which may extend to three years, and shall also be liable to fine.

"A forged document."

470. A false document made wholly or in part by forgery is designated "a forged document".

Using as genuine a forged document.

471. Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document.

Making or possessing a counterfeit seal, plate, etc., with intent to commit a forgery punishable under section 467.

472. Whoever makes or counterfeits any seal, plate, or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under section 467, or with such intent, has in his possession any such seal, plate, or other instrument, knowing the same to be counterfeit, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Making or possessing a counterfeit seal, plate, etc., with intent to commit a forgery punishable otherwise.

473. Whoever makes or counterfeits any seal, plate, or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under any section of this chapter other than section 467, or with such intent, has in his possession any such seal, plate other than instrument, knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Having possession of a valuable security or will, known to be forged with intent to use it as genuine.

474. Whoever has in possession any document, knowing the same to be forged, and intending that the same shall fraudulently or dishonestly be used as genuine, shall, if the document is one of the description mentioned in section 466, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if the document is one of the description mentioned in section 467, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Counterfeiting a device or mark used for authenticating documents described in section 467 or possessing counterfei marked material.

475. Whoever counterfeits upon, or in the substance of, any material, any device or mark used for the purpose of authenticating any document described in section 467, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such

material, or who with such intent has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Counterfeiting a device or mark used for authenticating documents other than those described in section 467, or possessing counterfeit marked material.

476. Whoever counterfeits upon, or in the substance of, any material, any device or mark used for the purpose of authenticating any document other than the documents described in section 467, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who with such intent has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Fraudulent cancellation, destruction, etc., of a will, etc.

477. Whoever fraudulently or dishonestly, or with intent to cause damage or injury to the public or to any person, cancels, destroys or defaces, or attempts to cancel, destroy or deface or secretes or attempts to secrete any document which is or purports to be a will, or an authority to adopt a son, or any valuable security, or commits mischief in respect to such document, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Falsification of accounts.

*__477-A.__ Whoever, being a clerk, officer or servant, or employed or acting in the capacity of a clerk, officer or servant, wilfully, and with intent to defraud, destroys, alters, mutilates, or falsifies any book, paper, writing, valuable security or account which belongs to, or is in the possession of his employer, or has been received by him for, or on behalf of his employer, or wilfully, and with intent to defraud, makes or abets the making of any false entry in, or omits or alters or abets the omission or alteration of any material particular from or in, any such book, paper, writing, valuable security or account, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

* This section was added by Act I of 1904, S. 32.

Sections 478-484.

Explanation.—It shall be sufficient in any charge under this section to allege a general intent to defraud without naming any particular person intended to be defrauded or specifying any particular sum of money intended to be the subject of the fraud, or any particular day on which the offence was committed.

* OF TRADE, PROPERTY AND OTHER MARKS.

Trade mark.

478. A mark used for denoting that goods are the manufacture or merchandise of a particular person is called a trade mark.

Property mark.

479. A mark used for denoting that moveable property belongs to a particular person is called a property mark.

Using a false trade mark.

480. Whoever marks any goods or any case, package or other receptacle containing goods, or uses any case, package or other receptacle with any mark thereon, in a manner reasonably calculated to cause it to be believed that the goods so marked, or any goods contained in any such receptacle so marked, are the manufacture or merchandise of a person whose manufacture or merchandise they are not, is said to use a false trade mark.

Using a false property mark.

481. Whoever marks any moveable property or goods or any case, package or other receptacle containing moveable property or goods, or uses any case, package or other receptacle having any mark thereon, in a manner reasonably calculated to cause it to be believed that the property or goods so marked, or any property or goods contained in any such receptacle so marked, belong to a person to whom they do not belong, is said to use a false property mark.

Punishment for using a false trade mark or property mark.

482. Whoever uses any false trade mark or any false property mark shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Counterfeiting a trade mark or property mark used by another.

483. Whoever counterfeits any trade mark or property mark used by any other person shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Counterfeiting a mark used by a public servant.

484. Whoever counterfeits any property mark used by a public servant, or any mark used by a public servant to denote that any property has been manufactured by a

* Sections 478 to 489 were substituted for the original sections by the Mysore Merchandise Marks Act, 1892 (1 of 1892), S. 3.

particular person or at a particular time or place or that the property is of a particular quality or has passed through a particular office or that it is entitled to any exemption, or uses as genuine any such mark knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Making or possession of any instrument for counterfeiting a trade mark or property mark.

485. Whoever makes or has in his possession any die, plate or other instrument for the purpose of counterfeiting a trade mark or property mark, or has in his possession a trade mark or property mark for the purpose of denoting that any goods are the manufacture or merchandise of a person whose manufacture or merchandise they are not, or that they belong to a person to whom they do not belong, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Selling goods marked with a counterfeit trade mark or property mark.

486. Whoever sells, or exposes or has in possession for sale or any purpose of trade or manufacture, any goods or things with a counterfeit trade mark or property mark affixed to or impressed upon the same or to or upon any case, package or other receptacle in which such goods are contained, shall, unless he proves—

(*a*) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of the commission of the alleged offence no reason to suspect the genuiness of the mark, and

(*b*) that on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things, or

(*c*) that otherwise he had acted innocently,

be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Making a false mark upon any receptacle containing goods.

487. Whoever makes any false mark upon any case, package or other receptacle containing goods, in a manner reasonably calculated to cause any public servant or any other person to believe that such receptacle contains goods which it does not contain or that it does not contain goods which it does contain or that the goods contained in such receptacle are of a nature or quality different from the real nature or quality thereof, shall, unless he proves

that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for making use of any such false mark.

488. Whoever makes use of any such false mark in any manner prohibited by the last foregoing section shall, unless he proves that he acted without intent to defraud, be punished as if he had committed an offence against that section.

Tampering with property mark with intent to cause injury.

489. Whoever removes, destroys, defaces or adds to any property mark, intending or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

OF CURRENCY NOTES AND BANK NOTES.

Counterfeiting currency notes or bank notes.

**489*-A. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any currency note, or bank note, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—For the purposes of this section and of sections 489-B, 489-C and 489-D, the expression "bank note" means a promissory note or engagement for the payment of money to bearer on demand issued by any person carrying on the business of banking in any part of the world, or issued by or under the authority of any State or Sovereign Power, and intended to be used as equivalent to, or as a substitute for, money.

Using as genuine forged or counterfeit currency notes or bank notes.

489-B. Whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine any forged or counterfeit currency note or bank note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Possession of forged or counterfeit currency notes or bank notes.

489-C. Whoever has in his possession any forged or counterfeit currency note or bank note, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be

* Sections 489-A to 489-D were inserted by Act I of 1904, S. 33.

used as genuine, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Making or possessing instruments or materials for forging or counterfeiting currency notes or bank notes.

489-D. Whoever makes, or performs any part of the process of making, or buys or sells or disposes of, or has in his possession any machinery, instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for forging or counterfeiting any currency note or bank note, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

CHAPTER XIX.

OF THE CRIMINAL BREACH OF CONTRACTS OF SERVANTS.

Breach of contract of service during a voyage or journey.

490. Whoever, being bound by a lawful contract to render his personal service in conveying or conducting any person or any property from one place to another place, or to act as servant to any person during a voyage or journey, or to guard any person or property during a voyage or journey, voluntarily omits so to do, except in the case of illness or ill-treatment, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

Illustrations.

(*a*) A, a palanquin bearer, being bound by legal contract to carry Z from one place to another, runs away in the middle of the stage. A has committed the offence defined in this section.

(*b*) A, a cooly, being bound by lawful contract to carry Z's baggage from one place to another, throws the baggage away. A has committed the offence defined in this section.

(*c*) A, a proprietor of bullocks, being bound by legal contract to convey goods on his bullocks from one place to another, illegally omits to do so. A has committed the offence defined in this section.

Sections 491-492.

(*d*) A, by unlawful means, compels B, a cooly, to carry his baggage. B in the course of the journey puts down the baggage and runs away. Here as B was not lawfully bound to carry the baggage, he has not committed any offence.

Explanation.—It is not necessary to this offence that the contract should be made with the person for whom the service is to be performed. It is sufficient if the contract is legally made with any person, either expressly or impliedly, by the person who is to perform the service.

Illustration.

A contracts with a dak company to drive his carriage for a month. B employed the dak company to convey him on a journey, and during the month the company supplies B with a carriage which is driven by A. A in the course of the journey voluntarily leaves the carriage. Here, although A did not contract with B, A is guilty of an offence under this section.

Breach of contract to attend on and supply the wants of helpless persons.

491. Whoever, being bound by a lawful contract to attend on or to supply the wants of any person who by reason of youth, or of unsoundness of mind, or of a disease or bodily weakness, is helpless or incapable of providing for his own safety, or of supplying his own wants, voluntarily omits so to do, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

Breach of contract to serve at a distant place to which the servant is conveyed at the master's expense.

492. Whoever being bound by lawful contract in writing to work for another person as an artificer, workman or labourer, for a period not more than three years, at any place within British India to which by virtue of the contract he has been or is to be conveyed at the expense of such other, voluntarily deserts the service of that other during the continuance of his contract, or without reasonable cause refuses to perform the service which he has contracted to perform, such service being reasonable and proper service, shall be punished with imprisonment of either description for a term not exceeding one month, or with fine not exceeding double the amount of such expense, or with both; unless the employer has ill-treated him or neglected to perform the contract on his part.

CHAPTER XX.

OF OFFENCES RELATING TO MARRIAGE.

Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.

493. Every man who by deceit causes any woman who is not lawfully married to him, to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Marrying again during the life-time of husband or wife.

494. Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Exception.—This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time, provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted, of the real state of facts so far as the same are within his or her knowledge.

Same offence with concealment of the former marriage from the person with whom subsequent marriage is contracted.

495. Whoever commits the offence defined in the last preceding section, having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Marriage ceremony gone through with fraudulent intent without lawful marriage.

496. Whoever, dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Sections 497-499.

Adultery.

497. Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor.

Enticing or taking away or detaining with a criminal intent a married woman.

498. Whoever takes or entices away any woman who is and whom he knows or has reason to believe to be the wife of any other man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

CHAPTER XXI.

OF DEFAMATION.

Defamation.

499. Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.—An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4.—No imputation is said to harm a person's reputation, unless that imputation directly or

indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

Illustrations.

(*a*) A says "Z is an honest man: he never stole B's watch"; intending to cause it to be believed that Z did steal B's watch. This is a defamation, unless it fall within one of the exceptions.

(*b*) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

(*c*) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

Imputation of any truth which the public good requires to be made or published.

First Exception.—It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Public conduct of public servants.

Second Exception.—It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Conduct of any person touching any public question.

Third Exception.—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

Illustration.

It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such a meeting, in forming or joining any society

which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.

Publication of reports of Proceedings of Courts of Justice.

Fourth Exception.—It is not defamation to publish a substantially true report of the proceedings of a Court of Justice; or of the result of any such proceedings.

Explanation.—A Justice of the Peace or other officer holding an enquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.

Merits of a case decided in a Court of Justice; or conduct of witnesses and others concerned therein.

Fifth Exception.—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

Illustrations.

(*a*) A says—"I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest." A is within this exception if he says this in good faith; inasmuch as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no further.

(*b*) But if A says—"I do not believe what Z asserted at that trial, because I know him to be a man without veracity;"—A is not within this exception, inasmuch as the opinion which he expresses of Z's character, is an opinion not founded on Z's conduct as a witness.

Merits of a public performance.

Sixth Exception.—It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

Explanation.—A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

Section 499.

Illustrations.

(*a*) A person who publishes a book, submits that book to the judgment of the public.

(*b*) A person who makes a speech in public, submits that speech to the judgment of the public.

(*c*) An actor or singer who appears on a public stage, submits his acting or singing to the judgment of the public.

(*d*) A says of a book published by Z.—"Z's book is foolish, Z must be a weak man. Z's book is indecent, Z must be a man of impure mind." A is within this exception, if he says this in good faith, inasmuch as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book and no further.

(*e*) But if A says—"I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine." A is not within this exception inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

Censure passed in good faith by a person having lawful authority over another.

Seventh Exception.—It is not defamation in a person having over another any authority, either conferred by law, or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Illustration.

A judge censuring in good faith the conduct of a witness or of an officer of the Court; a head of a department censuring in good faith those who are under his orders; a parent censuring in good faith a child in the presence of other children; a schoolmaster, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier—are within this exception.

Accusation preferred in good faith to a duly authorized person.

Eighth Exception.—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person, with respect to the subject-matter of accusation.

Sections 500-502.

Illustration.

If A, in good faith accuses Z before a Magistrate; if A, in good faith complains of the conduct of Z, a servant, to Z's master; if A, in good faith complains of the conduct of Z, a child, to Z's father; A is within this exception.

Ninth Exception.—It is not defamation to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good. Imputation made in good faith by a person for the protection of his interests.

Illustrations.

(*a*) A, a shopkeeper says to B, who manages his business,—"Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty." A is within the exception if he has made this imputation on Z in good faith for the protection of his own interests.

(*b*) A, a Magistrate, in making a report to his superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within the exception.

Tenth Exception.—It is not defamation to convey a caution in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good. Caution intended for good of the person to whom it is conveyed or for the public good.

500. Whoever defames another, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both. Punishment for defamation.

501. Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both. Printing or engraving matter known to be defamatory.

502. Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both. Sale of printed or engraved substance containing defamatory matter.

Sections 503-505.

CHAPTER XXII.

OF CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE.

Criminal intimidation.

503. Whoever threatens another with any injury to his person, reputation, or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation.—A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.

Illustration.

A, for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation.

Intentional insult with intent to provoke a breach of the peace.

504. Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Statements conducing to public mischief.

**505.* Whoever makes, publishes or circulates any statement, rumour or report,—

(*a*) with intent to cause, or which is likely to cause any officer, soldier or sailor in the army or navy of His Majesty the King Emperor or in the Royal Indian Marine or in the Military Forces of the Maharaja to mutiny or otherwise disregard or fail in his duty as such; or

(*b*) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public, whereby any person may be induced to commit an offence against the State or against the public tranquillity; or

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*Section 505 was repealed and the present section substituted therefor, by Act of 1904, S. 34.

Sections 506-508.

(*c*) with intent to incite, or which is likely to incite any class or community of persons to commit any offence against any other class or community ;

shall be punished with imprisonment which may extend to two years, or with fine, or with both.

Exception.—It does not amount to an offence, within the meaning of this section, when the person making, publishing or circulating any such statement, rumour or report has reasonable grounds for believing that such statement, rumour or report is true, and makes, publishes or circulates it without any such intent as aforesaid.

Punishment for criminal intimidation.

506. Whoever commits the offence of criminal intimidation, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both ;

If threat be to cause death or grievous hurt, etc.

and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or transportation, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description, for a term which may extend to seven years, or with fine, or with both.

Criminal intimidation by an anonymous communication.

507. Whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence by the last preceding section.

Act caused by inducing a person to believe that he will be rendered an object of the divine displeasure.

508. Whoever voluntarily causes or attempts to cause any person to do anything which that person is not legally bound to do, or to omit to do anything which he is legally entitled to do, by inducing or attempting to induce that person to believe that he or any person in whom he is interested will become or will be rendered by some act of the offender an object of divine displeasure if he does not do the thing which it is the object of the offender to cause him to do, or if he does the thing which it is the object of the offender to cause him to omit, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Sections 509-511.

Illustrations.

(*a*) A sits dhurna at Z's door with the intention of causing it to be believed that by so sitting he renders Z an object of divine displeasure. A has committed the offence defined in this section.

(*b*) A threatens Z that, unless Z performs a certain act, A will kill one of A's own children, under such circumstances that the killing would be believed to render Z an object of divine displeasure. A has committed the offence defined in this section.

Word or gesture intended to insult the modesty of a woman.

509. Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen by such woman, or intrudes upon the privacy of such woman shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Misconduct in public by a drunken person.

510. Whoever, in a state of intoxication, appears in any public place or in any place which it is a trespass in him to enter, and there conducts himself in a such manner as to cause annoyance to any person, shall be punished with simple imprisonment for a term which may extend to twenty-four hours, or with fine which may extend to ten rupees, or with both.

CHAPTER XXIII.

OF ATTEMPTS TO COMMIT OFFENCES.

Punishment for attempting to commit offences punishable with imprisonment.

511. Whoever attempts to commit an offence punishable by this Code with transportation or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with transportation or imprisonment of any description provided for the offence for a term of transportation or imprisonment which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

Illustrations.

(*a*) A makes an attempt to steal some jewels by breaking open a box, and finds after so opening the box that there is no jewel in it. He has done an act towards the commission of theft, and therefore is guilty under this section.

(*b*) A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket. A is guilty under this section.

Pages 190—224 both inclusive forming the Index to the Indian Penal Code as in force in Mysore, have been omitted.

ACT No. X of 1865.

Notification by the Government of India, Foreign Department No. 203, *Judicial, dated Simla, the* 23*rd July* 1868.

His Excellency the Viceroy and Governor-General in Council is pleased to extend Act X of 1865 (The Indian Succession Act) to the Territories of Mysore. Under Section 332, His Excellency in Council is pleased to exempt from the operation of the Act all Native Christians in the Mysore Territories.

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321. Creditor may call upon legatee to refund.
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327. Liability of executor or administrator for devastation.
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MISCELLANEOUS.

329. } [*Repealed.*]
330. }
331. Succession to property of Hindus, etc., and certain will intestacies and marriages not affected.
332. Power of Governor-General in Council to exempt any race sect or tribe in British India from operation of Act.

SCHEDULE. [*Repealed.*]

ACT No. X OF 1865.

(RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL ON THE 16TH MARCH 1865.)

An Act to amend and define the Law of Intestate and Testamentary Succession in British India.

Preamble.

Whereas it is expedient to amend and define the rules of law applicable to Intestate and Testamentary Succession in British India; It is enacted as follows :—

PART I.

PRELIMINARY.

Short Title.

1. This Act may be cited as "The Indian Succession Act, 1865."

Act to constitute law of British India in cases of intestate or testamentary succession.

2. Except as provided by this Act or by any other law for the time being in force, the rules herein contained shall constitute the law of British India applicable to all cases of intestate or testamentary succession.

Interpretation clause.

3. In this Act, unless there be something repugnant in the subject or context—

Number.

Words importing the singular number include the plural: words importing the plural number include the singular; and words importing the male sex include

Gender.

females:

Interpretation.

"Person."

"Person" includes any company or association, or body of persons, whether incorporated or not:

"Year." "Month."

"Year" and "month", respectively, mean a year and month reckoned according to the British Calendar:

"Immovable property."

"Immovable property" includes land, incorporeal tenements and things attached to the earth, or permanently fastened to anything which is attached to the earth:

"Movable porperty."

"Movable property" means property of every description except immovable property:

"Province."

"Province" includes any division of British India having a Court of the last resort:

Sections 4-5.

"British India" means the territories which are or may become vested in Her Majesty or her successors by the Statute 21 and 22 Vic., Cap. 106, other than the Settlement of Prince of Wales' Island, Singapore and Malacca. "British India."

"District Judge" means the Judge of a principal Civil Court of original jurisdiction: "District Judge."

"Minor" means any person who shall not have completed the age of eighteen years, and "minority" means the status of such person: "Minor." "Minority."

"Will" means the legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death: "Will."

"Codicil" means an instrument made in relation to a will, and explaining, altering or adding to its dispositions. It is considered as forming an additional part of the will: "Codicil."

"Probate" means the copy of a will certified under the seal of a Court of competent jurisdiction, with a grant of administration to the estate of the testator: "Probate."

"Executor" means a person to whom the execution of the last will of a deceased person is, by the testator's appointment confided: "Executor."

"Administrator" means a person appointed by competent authority to administer the estate of a deceased person when there is no executor: "Administrator."

And in every part of the British India to which this Act shall extend, "Local Government" shall mean the person authorized by law to administer executive Government in such part; and "Local Government"

"High Court" shall mean the highest Civil Court of appeal therein. "High Court."

4. No person shall by marriage, acquire any interest in the property of the person whom he or she marries, nor become incapable of doing any act in respect of his or her own property, which he or she could have done if unmarried. Interests and powers not acquired nor lost by marriage.

PART I.

OF DOMICILE.

5. Succession to the immovable property in British India of a person deceased is regulated by the law of British India, wherever he may have had his domicile at the time of his death. Law regulating succession to deceased person's immovable and movable property respectively.

Sections 6-10.

Succession to the movable property of a person deceased is regulated by the law of the country in which he had his domicile at the time of his death.

Illustration.

(*a*) A, having his domicile in British India, dies in France, leaving movable property in France, movable property in England, and property both movable and immovable, in British India. The succession to the whole is regulated by the law of British India.

(*b*) A, an Englishman, having his domicile in France, dies in British India, and leaves property, both movable and immovable, in British India. The succession to the movable property is regulated by the rules which govern, in France, the succession to the movable property of an Englishman dying domiciled in France, and the succession to the immovable property is regulated by the law of British India.

One domicile only affects succession to movables.

6. A person can only have one domicile for the purpose of succession to his movable property.

Domicile of origin of person of legitimate birth.

7. The domicile of origin of every person of legitimate birth is in the country in which at the time of his birth his father was domiciled, or, if he is a posthumous child, in the country in which his father was domiciled at the time of the father's death.

Illustration.

At the time of the birth of A, his father was domiciled in England. A's domicile of origin is in England, whatever may be the country in which he was born.

Domicile of origin of illegitimate child.

8. The domicile of origin of an illegitimate child is in the country in which, at the time of his birth, his mother was domiciled.

Continuance of domicile of origin.

9. The domicile of origin prevails until a new domicile has been acquired.

Acquisition of new domicile.

10. A man acquires a new domicile by taking up his fixed habitation in a country which is not that of his domicile of origin.

Explanation.—A man is not to be considered as having taken up his fixed habitation in British India merely by reason of his residing there in Her Majesty's Civil or Military Service, or in the exercise of any profession or calling.

Illustration.

(*a*) A, whose domicile of origin is in England, proceeds to British India, where he settles as a barrister or a merchant, intending to reside there during the remainder of his life. His domicile is now in British India.

Sections 11-14.

(*b*) A, whose domicile is in England, goes to Austria, and enters the Austrian service intending to remain in that service. A has acquired a domicile in Austria.

(*c*) A, whose domicile of origin is in France, comes to reside in British India under an engagement with the British Indian Government for a certain number of years. It is his intention to return to France at the end of that period. He does not acquire a domicile in British India.

(*d*) A, whose domicile is in England, goes to reside in British India for the purpose of winding up the affairs of a partnership which has been dissolved, and with the intention of returning to England as soon as that purpose is accomplished. He does not by such residence acquire a domicile in British India, however long the residence may last.

(*e*) A, having gone to reside in British India under the circumstances mentioned in the last preceding illustration, afterwards alters his intention, and takes up his fixed habitation in British India. A has acquired a domicile in British India.

(*f*) A, whose domicile is in the French Settlement of Chandernagore, is compelled by political events to take refuge in Calcutta, and resides in Calcutta for many years in the hope of such political changes as may enable him to return with safety to Chandernagore. He does not by such residence acquire a domicile in British India.

(*g*) A, having come to Calcutta under the circumstances stated in the last preceding illustration continues to reside there after such political changes have occurred as would enable him to return with safety to Chandernagore, and he intends that his residence in Calcutta shall be permanent. A has acquired a domicile in British India.

Special mode of acquiring domicile in British India.

11. Any person may acquire a domicile in British India by making and depositing in some office in British India (to be fixed by the Local Government) a declaration in writing under his hand of his desire to acquire such domicile, provided that he shall have been resident in British India for one year immediately preceding the time of his making such declaration.

Domicile not acquired by residence as representative of foreign Government or as part of his family.

12. A person who is appointed by the Government of one country to be its ambassador, consul or other representative in another country, does not acquire a domicile in the latter country by reason only of residing there in pursuance of his appointment; nor does any other person acquire such domicile by reason only of residing with him as part of his family or as a servant.

Continuance of new domicile.

13. A new domicile continues until the former domicile has been resumed, or another has been acquired.

Minor's domicile.

14. The domicile of a minor follows the domicile of the parent from whom he derived his domicile of origin.

Exception.—The domicile of a minor does not change with that of his parent, if the minor is married or holds any office or employment in the Service of Her Majesty, or has

set up, with the consent of the parent, in any distinct business.

Domicile acquired by woman on marriage.

15. By marriage a woman acquires the domicile of her husband, if she had not the same domicile before.

Wife's domicile during marriage.

16. The wife's domicile during the marriage follows the domicile of her husband.

Exception.—The wife's domicile no longer follows that of her husband if they be separated by the sentence of a competent Court, or if the husband is undergoing a sentence of transportation.

Minor's acquisition of new domicile.

17. Except in the cases above provided for, a person cannot during minority acquire a new domicile.

Lunatic's acquisition of new domicile.

18. An insane person cannot acquire a new domicile in any other way than by his domicile following the domicile of another person.

Succession to movable property in British India, in absence of proof of domicile elsewhere.

19. If a man dies leaving movable property in British India, in the absence of proof of any domicile elsewhere, succession to the property is regulated by the law of British India.

PART III.

OF CONSANGUINITY.

Kindred or consanguinity.

20. Kindred or consanguinity is the connexion or relation of persons descended from the same stock or common ancestor.

Lineal consanguinity.

21. Lineal consanguinity is that which subsists between two persons, one of whom is descended in a direct line from the other, as between a man and his father, grandfather and great-grandfather, and so upwards in the direct ascending line; or between a man, his son, grandson, great-grandson, and so downwards in the direct descending line.

Every generation constitutes a degree; either ascending or descending.

A man's father is related to him in the first degree, and so likewise is his son; his grandfather and grandson in the second degree; his great-grandfather and great-grandson in the third.

Sections 22-24.

Collateral consanguinity.

22. Collateral consanguinity is that which subsists between two persons who are descended from the same stock or ancestor, but neither of whom is descended in a direct line from the other. For the purpose of ascertaining in what degree of kindred any collateral relative stands to a person deceased, it is proper to reckon upwards from the person deceased to the common stock, and then downwards to the collateral relative, allowing a degree for each person, both ascending and descending.

Persons held for purpose of succession to be similarly related to the deceased.

23. For the purpose of succession, there is no distinction between those who are related to a person deceased through his father and those who are related to him through his mother;

nor between those who are related to him by the full blood, and those who are related to him by the half blood;

nor between those who are actually born in his lifetime, and those who at the date of his death were only conceived in the womb, but who have been subsequently born alive.

Mode of computing degrees of kindred.

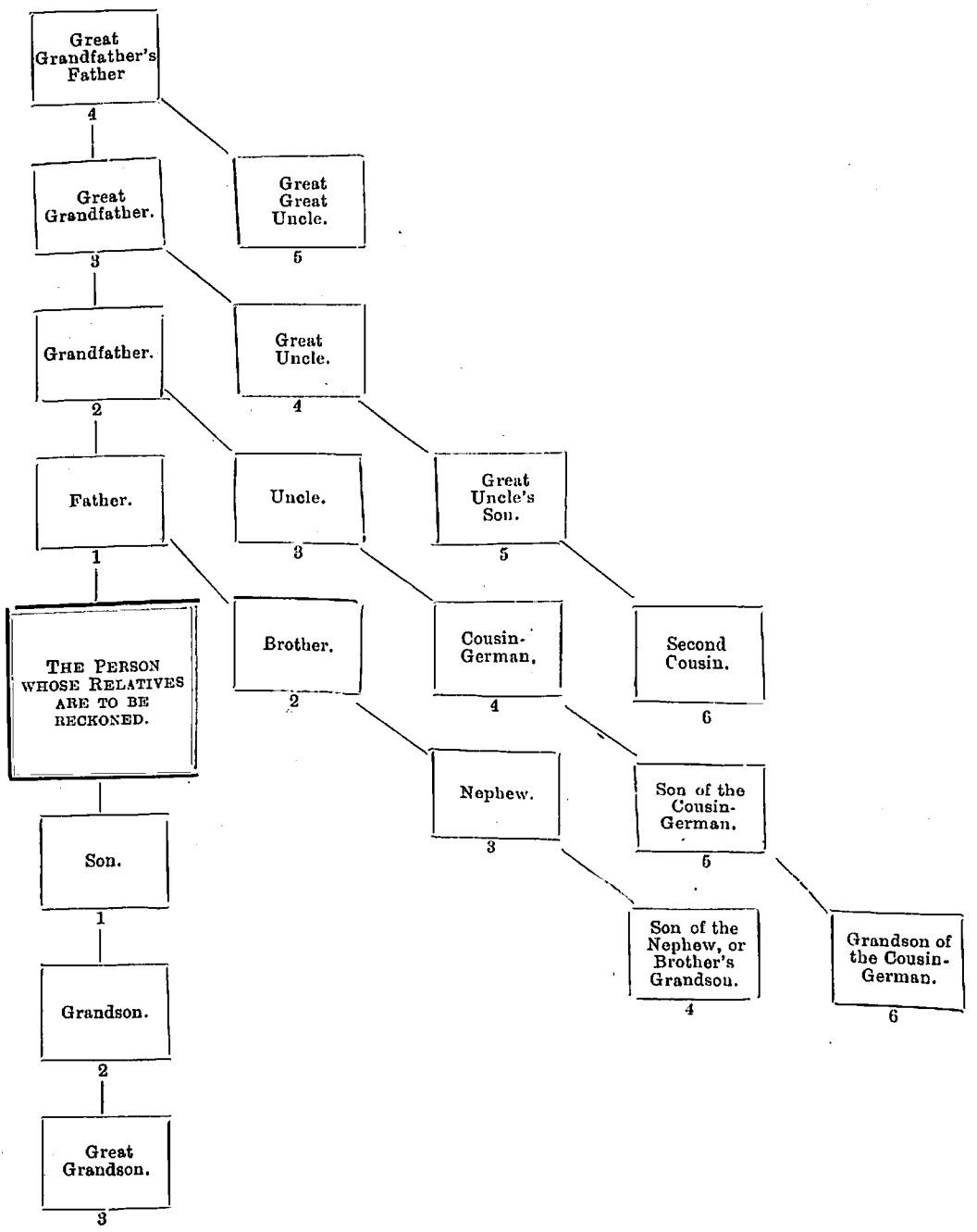
24. In the annexed table of kindred the degrees are computed as far as the sixth, and are marked by numeral figures.

The person whose relatives are to be reckoned, and his cousin-german, or first cousin, are, as shown in the table, related in the fourth degree; there being one degree of ascent to the father, and another to the common ancestor, the grandfather; and from him one of descent to the uncle, and another to the cousin-german; making in all four degrees.

A grandson of the brother and a son of the uncle, *i.e.*, a great-nephew and a cousin-german, are in equal degree, being each four degrees removed.

A grandson of a cousin-german is in the same degree as the grandson of a great uncle, for they are both in the sixth degree of kindred.

TABLE OF CONSANGUINITY.



Sections 25-28.

PART IV.

OF INTESTACY.

25. A man is considered to die intestate in respect of all property of which he has not made a testamentary disposition which is capable of taking effect. As to what property deceased considered to have died intestate.

Illustrations.

(*a*) A has left no will. He has died intestate in respect of the whole of his property.

(*b*) A has left a will, whereby he has appointed B his executor; but the will contains no other provisions. A has died intestate in respect of the distribution of his property.

(*c*) A has bequeathed his whole property for an illegal purpose. A has died intestate in respect of the distribution of his property.

(*d*) A has bequeathed 1,000*l* to B and 1,000*l* to the eldest son of C and has made no other bequest; and has died leaving the sum of 2,000*l* and no other property. C died before A without having ever had a son. A has died intestate in respect of the distribution of 1,000*l*.

26. Such property devolves upon the wife or husband or upon those who are of the kindred of the deceased, in the order and according to the rules herein prescribed. Devolution of such property.

Explanation.—The widow is not entitled to the provision hereby made for her, if by a valid contract made before her marriage she has been excluded from her distributive share of her husband's estate.

27. Where the intestate has left a widow, if he has also left any lineal descendants, one-third of his property shall belong to his widow, and the remaining two-thirds shall go to his lineal descendants, according to the rules herein contained. Where intestate has left widow and lineal descendants or widow and kindred only.

If he has left no lineal descendant, but has left persons who are kindred to him, one-half of his property shall belong to his widow, and the other half shall go to those who are of kindred to him, in the order and according to the rules herein contained. or widow and no kindred.

If he has left none who are of kindred to him, the whole of his property shall belong to his widow.

28. Where the intestate has left no widow, his property shall go to his lineal descendants or to those who are of kindred to him, not being lineal descendants, according to the rules herein contained: and, if he has left none who are of kindred to him, it shall go to the Crown. Where intestate has left no widow, and where he has left no kindred.

Sections 29-33.

PART V.

OF THE DISTRIBUTION OF AN INTESTATE'S PROPERTY.

(*a*) *Where he has left Lineal Descendants.*

Rules of distribution.

29. The rules for the distribution of the intestate's property (after deducting the widow's share, if he has left a widow) amongst his lineal descendants are as follows :—

Where intestate has left child or children only.

30. Where the intestate has left surviving him a child or children, but no more remote lineal descendant through a deceased child, the property shall belong to his surviving child, if there be only one, or shall be equally divided among all his surviving children.

Where intestate has left no child, but grandchild or grandchildren.

31. Where the intestate has not left surviving him any child, but has left a grandchild or grandchildren, and no more remote descendant through a deceased grandchild, the property shall belong to his surviving grandchild, if there be only one, or shall be equally divided among all his surviving grandchildren.

Illustrations.

(*a*) A has three children, and no more; John, Mary and Henry. They all die before the father, John leaving two children, Mary three, and Henry four. Afterwards A dies intestate, leaving those nine grandchildren and no descendant of any deceased grandchild. Each of his grand-children shall have one-ninth.

(*b*) But if Henry has died, leaving no child, then the whole is equally divided between the intestate's five grand-children, the children of John and Mary.

(*c*) A has two children, and no more; John and Mary. John dies before his father, leaving his wife pregnant. Then A dies, leaving Mary surviving him, and in due time a child of John is born. A's property is to be equally divided between Mary and such posthumous child.

Where intestate has left only great grandchildren or remoter lineal descendants.

32. In like manner the property shall go to the surviving lineal descendants who are nearest in degree to the intestate, where they are all in the degree of great grand-children to him, or are all in a more remote degree.

Where intestate leaves lineal descendants not all in same degree of kindred to him, and those

33. If the intestate has left lineal descendants who do not all stand in the same degree of kindred to him, and the persons through whom the more remote are descended from him are dead, the property shall be divided into such a number of equal shares as may correspond with the number of the lineal descendants of the intestate who either

Sections 34-36.

stood in the nearest degree of kindred to him at his decease, or, having been of the like degree of kindred to him, died before him, leaving lineal descendants who survived him; and one of such shares shall be allotted to each of the lineal descendants who stood in the nearest degree of kindred to the intestate at his decease; and

through whom the more remote descend are dead.

one of such shares shall be allotted in respect of each of such deceased lineal descendants; and

the share allotted in respect of each of such deceased lineal descendants shall belong to his surviving child or children or more remote lineal descendants, as the case may be; such surviving child or children or more remote lineal descendants always taking the share which his or their parent or parents would have been entitled to respectively if such parent or parents had survived the intestate.

Illustrations.

(*a*) A had three children, John, Mary and Henry; John died, leaving four children, and Mary died, leaving one, and Henry alone survived the father. On the death of A, intestate, one-third is allotted to Henry, one-third to John's four children, and the remaining third to Mary's one child.

(*b*) A left no child, but left eight grandchildren, and two children of a deceased grandchild. The property is divided into nine parts, one of which is allotted to each grandchild; and the remaining one-ninth is equally divided between the two great grandchildren.

(*c*) A has three children, John, Mary and Henry. John dies leaving four children, one of John's children dies leaving two children. Mary dies leaving one child. A afterwards dies, intestate. One-third of his property is allotted to Henry; one-third to Mary's child; and one-third is divided into four parts, one of which is allotted to each of John's three surviving children, and the remaining part is equally divided between John's two grandchildren.

(*b*) *Where the Intestate has left no lineal descendants.*

34. Where an intestate has left no lineal descendants the rules for the distribution of his property (after deducting the widow's share, if he has left a widow) are as follows:—

Rules of distribution where intestate has left no lineal descendants.

35. If the intestate's father be living, he shall succeed to the property.

Where intestate's father living.

36. If the intestate's father is dead, but the intestate's mother is living, and there are also brothers or sisters of the intestate living, and there is no child living of any deceased brother or sister, the mother and each living brother or sister shall succeed to the property in equal shares.

Where intestate's father dead but his mother, brothers and sisters living.

Sections 37-39.

Illustration.

A dies, intestate, survived by his mother and two brothers of the full-blood, John and Henry, and a sister Mary, who is the daughter of his mother, but not of his father. The mother takes one-fourth, each brother takes one-fourth, and Mary the sister of half-blood, takes one-fourth.

Where intestate's father dead and his mother, a brother or sister, and children of any deceased brother or sister living.

37. If the intestate's father is dead, but the intestate's mother is living, and if any brother or sister, and the child or children of any brother or sister who may have died in the intestate's lifetime are also living, then the mother and each living brother or sister, and the living child and children of each deceased brother or sister, shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

Illustration.

A, the intestate, leaves his mother, his brothers John and Henry, and also one child of a deceased sister Mary, and two children of George, a deceased brother of the half-blood, who was the son of his father but not of his mother. The mother takes one-fifth, John and Henry each take one-fifth, the child of Mary takes one-fifth, and the two children of George divide the remaining one-fifth equally between them.

Where intestate's father dead and his mother and children of any deceased brother or sister living.

38. If the intestate's father is dead, but the intestate's mother is living, and the brothers and sisters are all dead but all or any of them have left children who survived the intestate, the mother and the child or children of each deceased brother or sister shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

Illustration.

A, the intestate, leaves no brother or sister, but leaves his mother and one child of a deceased sister Mary, and two children of a deceased brother George. The mother takes one-third, the child of Mary takes one-third and the children of George divide the remaining one-third equally between them.

Where intestate's father dead but his mother living and no brother, sister, nephew or niece.

39. If the intestate's father is dead, but the intestate's mother is living, and there is neither brother or sister, nor child of any brother or sister of the intestate, the property shall belong to the mother.

Sections 40-43.

40. Where the intestate has left neither lineal descendant nor father nor mother, the property is divided equally between his brothers and sisters and the child or children of such of them as may have died before him, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

Where intestate has left neither lineal descendant nor father nor mother.

41. If the intestate left neither lineal descendant, nor parent, nor brother, nor sister, his property shall be divided equally among those of his relatives who are in the nearest degree of kindred to him.

Where intestate has left neither lineal descendant, nor parent nor brother nor sister.

Illustrations.

(*a*) A, the intestate, has left a grandfather and a grandmother, and no other relative standing in the same or a nearer degree of kindred to him. They being in the second degree, will be entitled to the property in equal shares, exclusive of any uncle or aunt of the intestate, uncles and aunts being only in the third degree.

(*b*) A, the intestate, has left a great-grandfather or great-grandmother, and uncles and aunts, and no other relative standing in the same or a nearer degree of kindred to him. All of these being in the third degree shall take equal shares.

(*c*) A, the intestate, left a great-grandfather, an uncle and a nephew, but no relative standing in a nearer degree of kindred to him. All of these being in the third degree shall take equal shares.

(*d*) Ten children of one brother or sister of the intestate, and one child of another brother or sister of the intestate, constitute the class of relatives of the nearest degree of kindred to him. They shall each take one-eleventh of the property.

42. Where a distributive share in the property of a person who has died intestate shall be claimed by a child, or any descendant of a child, of such person, no money or other property which the intestate may during his life have paid, given or settled to, or for the advancement of the child by whom or by whose descendant the claim is made, shall be taken into account in estimating such distributive share.

Children's advancement not to be brought into hotchpot.

PART VI.

Of the Effect of Marriage and Marriage Settlement on Property.

43. The husband surviving his wife has the same rights in respect of her property, if she die intestate, as the widow has in respect of her husband's property, if he die intestate.

Rights of widower and widow, respectively.

Sections 44-47.

Effect of marriage between person domiciled and one not domiciled in British India.

44. If a person whose domicile is not in British India marries in British India a person whose domicile is in British India, neither party acquires by the marriage, any rights in respect of any property of the other party not comprised in a settlement made previous to the marriage, which he or she would not acquire thereby if both were domiciled in British India at the time of the marriage.

Settlement of minor's property in contemplation of marriage.

45. The property of a minor may be settled in contemplation of marriage, provided the settlement be made by the minor with the approbation of the minor's father, or, if he be dead or absent from British India, with the approbation of the High Court.

PART VII.

OF WILLS AND CODICILS.

Persons capable of making wills.

46. Every person of sound mind and not a minor may dispose of his property by will.

Explanation.—A married woman may dispose by will of any property which she could alienate by her own act during her life.

Explanation 2.—Persons who are deaf, or dumb, or blind are not thereby incapacitated for making a will if they are able to know what they do by it.

Explanation 3.—One who is ordinarily insane may make a will during an interval in which he is of sound mind.

Explanation 4.—No person can make a will while he is in such a state of mind, whether arising from drunkenness, or from illness, or from any other cause, that he does not know what he is doing.

Illustrations.

(*a*) A can perceive what is going on in his immediate neighbourhood and can answer familiar questions, but has not a competent understanding as to the nature of his property, or the persons who are of kindred to him, or in whose favour it would be proper that he should make his will. A cannot make a valid will.

(*b*) A executes an instrument purporting to be his will, but he does not understand the nature of the instrument nor the effect of its provisions. This instrument is not a valid will.

(*c*) A being very feeble and debilitated, but capable of exercising a judgment as to the proper mode of disposing of his property, makes his will. This is a valid will.

Testamentary guardian.

47. A father, whatever his age may be, may by will appoint a guardian or guardians for his child during minority.

Sections 48-50.

48. A will or any part of a will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, is void. Will obtained by fraud, coercion or importunity.

Illustrations.

(*a*) A, falsely and knowingly represents to the testator that the testator's only child is dead, or that he has done some undutiful act, and thereby induces the testator to make a will in his, A's, favour; such will has been obtained by fraud, and is invalid.

(*b*) A, by fraud and deception, prevails upon the testator to bequeath a legacy to him. The bequest is void.

(*c*) A, being a prisoner by lawful authority, makes his will. The will is not invalid by reason of the imprisonment.

(*d*) A threatens to shoot B, or to burn his house, or to cause him to be arrested on a criminal charge, unless he makes a bequest in favour of C. B, in consequence makes a bequest in favour of C. The bequest is void, the making of it having been caused by coercion.

(*e*) A, being of sufficient intellect, if undisturbed by the influence of others, to make a will, yet being so much under the control of B that he is not a free agent, makes a will dictated by B. It appears that he would not have executed the will but for fear of B. The will is invalid.

(*f*) A, being in so feeble a state of health as to be unable to resist importunity, is pressed by B to make a will of a certain purport, and does so merely to purchase peace, and in submission to B. The will is invalid.

(*g*) A being in such a state of health as to be capable of exercising his own judgment and volition, B uses urgent intercession and persuasion with him to induce him to make a will of a certain purport. A, in consequence of the intercession and persuasion, but in the free exercise of his judgment and volition, makes his will in the manner recommended by B. The will is not rendered invalid by the intercession and persuasion of B.

(*h*) A, with a view to obtaining a legacy from B, pays him attention and flatters him, and thereby produces in him a capricious partiality to A. B, in consequence of such attention and flattery, makes his will, by which he leaves a legacy to A. The bequest is not rendered invalid by the attention and flattery of A.

49. A will is liable to be revoked or altered by the maker of it at any time when he is competent to dispose of his property by will. Will may be revoked or altered.

PART VIII.

Of the Execution of Unprivileged Wills.

50. Every testator, not being a soldier employed in an expedition, or engaged in actual warfare, or a mariner at sea must execute his will according to the following rules:— Execution of unprivileged wills.

First.—The testator shall sign or shall affix his mark

Sections 51-52.

to the will, or it shall be signed by some other person in his presence and by his direction.

Second.—The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

Third.—The will shall be attested by two or more witnesses, each of whom must have seen the testator sign or affix his mark to the will, or have seen some other person sign the will in the presence and by the direction of the testator, or have received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses must sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

Incorporation of papers by reference.

51. If a testator, in a will or codicil duly attested, refers to any other document then actually written, as expressing any part of his intentions, such document shall be considered as forming a part of the will or codicil in which it is referred to.

PART IX.

OF PRIVILEGED WILLS.

Privileged will.

52. Any soldier being employed in an expedition, or engaged in actual warfare, or any mariner being at sea, may, if he has completed the age of eighteen years, dispose of his property by a will made as is mentioned in the fifty-third section. Such wills are called privileged wills.

Illustrations.

(*a*) A, the surgeon of a regiment, is actually employed in an expedition. He is a soldier actually employed in an expedition, and can make a privileged will.

(*b*) A, is at sea in a merchant ship, of which he is the purser. He is a mariner, and being at sea can make a privileged will.

(*c*) A, a soldier serving in the field against insurgents, is a soldier engaged in actual warfare, and as such can make a privileged will.

(*d*) A, a mariner of a ship in the course of a voyage, is temporarily on shore while she is lying in harbour. He is, in the sense of the words used in this clause, a mariner at sea, and can make a privileged will.

(*e*) A, an admiral who commands a naval force, but who lives on shore, and only occasionally goes on board his ship, is not considered as at sea, and cannot make a privileged will.

Section 53.

(*f*) A, a mariner serving on a military expedition, but not being at sea, is considered as a soldier, and can make a privileged will.

Mode of making and rules for executing, privileged wills.

53. Privileged wills may be in writing, or may be made by word of mouth. The execution of them shall be governed by the following rules :—

First.—The will may be written wholly by the testator with his own hand. In such case it need not be signed nor attested.

Second.—It may be written wholly or in part by another person, and signed by the testator. In such case it need not be attested.

Third.—If the instrument purporting to be a will is written wholly or in part by another person, and is not signed by the testator, it shall be considered to be his will, if it be shown that it was written by the testator's directions, or that he recognized it as his will.

If it appear on the face of the instrument that the execution of it in the manner intended by him was not completed the instrument shall not by reason of that circumstance be invalid, provided that his non-execution of it can be reasonably ascribed to some cause other than the abandonment of the testamentary intentions expressed in the instrument.

Fourth.—If the soldier or mariner shall have written instructions for the preparation of his will, but shall have died before it could be prepared and executed, such instuctions shall be considered to constitute his will.

Fifth.—If the soldier or mariner shall, in the presence of two witnesses, have given verbal instructions for the preparation of his will, and they shall have been reduced into writing in his life-time, but he shall have died before the instrument could be prepared and executed, such instructions shall be considered to constitute his will, although they may not have been reduced into writing in his presence, nor read over to him.

Sixth.—Such soldier or mariner as aforesaid may make a will by word of mouth by declaring his intentions before two witnesses present at the same time.

Seventh.—A will made by word of mouth shall be null at the expiration of one month after the testator shall have ceased to be entitled to make a privileged will.

Sections 54-57.

PART X.

Of the Attestation, Revocation, Alteration and Revival of Wills.

Effect of gift to attesting witness.

54. A will shall not be considered as insufficiently attested by reason of any benefit thereby given, either by way of bequest or by way of appointment, to any person attesting it, or to his or her wife or husband:

but the bequest or appointment shall be void so far as concerns the person so attesting or the wife or husband of such person, or any person claiming under either of them.

Explanation.—A legatee under a will does not lose his legacy by attesting a codicil which confirms the will.

Witness not disqualified by interest or by being executor.

55. No person by reason of interest in, or of his being an executor of, a will, is disqualified as a witness to prove the execution of the will or to prove the validity or invalidity thereof.

Revocation of will by testator's marriage.

56. Every will shall be revoked by the marriage of the maker, except a will made in exercise of a power of appointment, when the property over which the power of appointment, is exercised would not, in default of such appointment, pass to his or her executor, or administrator, or to the person entitled in case of intestacy.

Power of appointment defined.

Explanation.—Where a man is invested with power to determine the disposition of property of which he is not the owner, he is said to have power to appoint such property.

Revocation of unprivileged will or codicil.

57. No unprivileged will or codicil, nor any part thereof, shall be revoked otherwise than by marriage, or by another will or codicil, or by some writing declaring an intention to revoke the same, and executed in the manner in which an unprivileged will is hereinbefore required to be executed, or by the burning, tearing or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

Illustrations.

(*a*) A has made an unprivileged will; afterwards A makes another unprivileged will which purports to revoke the first. This is a revocation.

(*b*) A has made an unprivileged will. Afterwards, A, being entitled to make a privileged will, makes a privileged will which purports to revoke his unprivileged will. This is revocation.

Sections 58-61.

Effect of obliteration, interlineation or alteration, in unprivileged will.

58. No obliteration, interlineation or other alteration made in any unprivileged will after the execution thereof shall have any effect, except so far as the words or meaning of the will shall have been thereby rendered illegible or undiscernible, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will; save that the will, as so altered, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.

Revocation of privileged will or codicil.

59. A privileged will or codicil may be revoked by the testator, by an unprivileged will or codicil, or by any Act expressing an intention to revoke it, and accompanied with such formalities as would be sufficient to give validity to a privileged will, or by the burning, tearing or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

Explanation.—In order to the revocation of a privileged will or codicil by an act accompanied with such formalities as would be sufficient to give validity to a privileged will, it is not necessary that the testator should at the time of doing that act be in a situation which entitles him to make a privileged will.

Revival of unprivileged will.

60. No unprivileged will or codicil, nor any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same;

Extent of revival of will or codicil partly revoked and afterwards wholly revoked.

and when any will or codicil, which shall be partly revoked, and afterwards wholly revoked, shall be revived such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown by the will or codicil.

PART XI.

Of the Construction of Wills.

Wording of will.

61. It is not necessary that any technical words or terms of art shall be used in a will, but only that the wording

Sections 62-63.

shall be such that the intention of the testator can be known therefrom.

Enquiries to determine questions as to object or subject of will.

62. For the purpose of determining questions as to what person or what property is denoted by any words used in a will, a court must inquire into every material fact relating to the persons who claim to be interested under such will, the property which is claimed as the subject of disposition, the circumstances of the testator and of his family, and into every fact a knowledge of which may conduce to the right application of the words which the testator has used.

Illustrations

(*a*) A, by his will, bequeaths 1,000 rupees to his eldest son, or to his youngest grandchild, or to his cousin Mary. A court may make inquiry in order to ascertain to what person the description in the will applies.

(*b*) A, by his will, leaves to B "his estate called Black Acre." It may be necessary to take evidence in order to ascertain what the subject-matter of the bequest; that is to say, what estate of the testator's is called Black Acre.

(*c*) A, by his will, leaves to B "the estate which he purchased of C." It may be necessary to take evidence in order to ascertain what estate the testator purchased of C.

Misnomer or misdescription of object.

63. Where the words used in the will to designate or describe a legatee, or a class of legatees, sufficiently show what is meant, an error in the name or description shall not prevent the legacy from taking effect.

A mistake in the name of the legatee may be corrected by a description of him, and a mistake in the description of a legatee may be corrected by the name.

Illustrations.

(*a*) A, bequeaths a legacy "to Thomas, the second son of his brother John." The testator has an only brother, named John, who has no son named Thomas, but has a second son whose name is William. William shall have the legacy.

(*b*) A, bequeaths a legacy "to Thomas, the second son of his brother John." The testator has an only brother named John, whose first son is named Thomas, and whose second son is named William. Thomas shall have the legacy.

(*c*) The testator bequeaths his property "to A and B, the legitimate children of C." C has no legitimate child, but has two illegitimate children, A and B. The bequest to A and B takes effect, although they are illegitimate.

(*d*) The testator gives his residuary estate to be divided among "his seven children," and, proceeding to enumerate them, mentions six names only. This omission shall not prevent the seventh child from taking a share with the others.

Sections 64-66.

(*e*) The testator, having six grandchildren, makes a bequest to "his six grandchildren," and, proceeding to mention them by their Christian names, mentions one twice over, omitting another altogether. The one whose name is not mentioned shall take a share with the others.

(*f*) The testator bequeaths "1,000 rupees to each of the three children of A." At the date of the will, A has four children. Each of these four children shall, if he survives the testator, receive a legacy of 1,000 rupees.

When words may be supplied.

64. Where any word material to the full expression of the meaning has been omitted, it may be supplied by the context.

Illustration.

The testator gives a legacy of "five hundred" to his daughter A, and a legacy of "five hundred rupees" to his daughter B. A shall take a legacy of five hundred rupees.

Rejection of erroneous particulars in description of subject.

65. If the thing which the testator intended to bequeath can be sufficiently identified from the description of it given in the will, but some parts of the description do not apply, such parts of the description shall be rejected as erroneous, and the bequest shall take effect.

Illustrations.

(*a*) A, bequeaths to B "his marsh lands lying in L, and in the occupation of X." The testator had marsh lands lying in L, but had no marsh lands in the occupation of X. The words "in the occupation of X" shall be rejected as erroneous, and the marsh lands of the testator lying in L shall pass by the bequest.

(*b*) The testator bequeaths to A "his zamindari of Rampore." He had an estate at Rampore, but it was a taluk and not a zamindari. The taluk passes by this bequest.

When part of description may not be rejected as erroneous.

66. If the will mentions several circumstances as descriptive of the thing which the testator intends to bequeath, and there is any property of his in respect of which all those circumstances exist, the bequest shall be considered as limited to such property, and it shall not be lawful to reject any part of the description as erroneous, because the testator had other property to which such part of the description does not apply.

Explanation.—In judging whether a case falls within the meaning of this section, any words which would be liable to rejection under the sixty-fifth section are to be considered as struck out of the will.

Illustrations.

(*a*) A bequeaths to B "his marsh lands lying in L, and in the occupation of X." The testator had marsh lands lying in L, some of

which were in the occupation of X, and some not in the occupation of X. The bequest shall be considered as limited to such of the testator's marsh lands lying in L as were in the occupation of X.

(*b*) A bequeaths to B "his marsh lands lying in L, and in the occupation of X, comprising 1,000 bighas of land." The testator had marsh lands lying in L, some of which were in the occupation of X, and some not in the occupation of X. The measurement is wholly inapplicable to the marsh lands of either class, or to the whole taken together. The measurement shall be considered as struck out of the will, and such of the testator's marsh lands lying in L as were in the occupation of X shall alone pass by the bequest.

Extrinsic evidence admissible in case of latent ambiguity.

67. Where the words of the will are unambiguous, but it is found by extrinsic evidence that they admit of applications, one only of which can have been intended by the testator, extrinsic evidence may be taken to show which of these applications was intended.

Illustrations.

(*a*) A man, having two cousins of the name of Mary, bequeaths a sum of money to "his cousin Mary." It appears that there are two persons, each answering the description in the will. That description, therefore, admits of two applications, only one of which can have been intended by the testator. Evidence is admissible to show which of the two applications was intended.

(*b*) A, by his will, leaves to B "his estate called Sultanpur Khurd." It turns out that he had two estates called Sultanpur Khurd. Evidence is admissible to show which estate was intended.

Extrinsic evidence inadmissible in cases of patent ambiguity or deficiency.

68. Where there is an ambiguity or deficiency on the face of the will, no extrinsic evidence as to the intentions of the testator shall be admitted.

Illustrations.

(*a*) A, man has an aunt Caroline and a cousin Mary, and has no aunt of the name Mary. By his will he bequeaths 1,000 rupees to "his aunt Caroline" and 1,000 rupees to "his cousin Mary," and afterwards bequeaths 2,000 rupees to his "before-mentioned aunt Mary." There is no person to whom the description given in the will can apply, and the evidence is not admissible to show who was meant by "his beforementioned aunt Mary." The bequest is therefore void for uncertainty under the seventy-sixth section.

(*b*) A, bequeaths 1,000 rupees to , leaving a blank for the name of the legatee. Evidence is not admissible to show what name the testator intended to insert.

(*c*) A, bequeaths to B rupees, or "his estate of ." Evidence is not admissible to show what sum or what estate the testator intended to insert.

Meaning of clause to be collected from entire will.

69. The meaning of any clause in a will is to be collected from the entire instrument, and all its parts are to be construed with reference to each other; and for this purpose a codicil is to be considered as part of the will.

Sections 70-73.

Illustrations.

(*a*) The testator gives to B a specific fund or property at the death of A, and by a subsequent clause gives the whole of his property to A. The effect of the several clauses taken together is to vest the specific fund or property in A for life, and after his decease in B:- it appearing from the bequest to B that the testator meant to use in a restricted sense the words in whith he describes what he gives to A.

(*b*) Where a testator, having an estate one part of which is called Black Acre, bequeaths the whole of his estate to A, and in another part of his will bequeaths Black Acre to B, the latter bequest is to be read as an exception out of the first, as if he had said, "I give Black Acre to B, and all the rest of my estate to A."

When words may be understood in restricted sense, and when in sense wider than usual.

0. General words may be understood in a restricted sense where it may be collected from the will that the testator meant to use them in a restricted sense; and words may be understood in a wider sense than that which they usually bear, where it may be collected from the other words of the will that the testator meant to use them in such wider sense.

Illustrations.

(*a*) A testator gives to A "his farm in the occupation of B," and to C "all his marsh lands in L." Part of the farm in the occupation of B consists of marsh lands in L, and the testator also has other marsh lands in L. The general words, "all his marsh lands in L," are restricted by the gift to A. A takes the whole of the farm in the occupation of B, including that portion of the farm which consists of marsh lands in L.

(*b*) The testator (a sailor on ship board) bequeathed to his mother his gold ring, buttons and chest of clothes, and to his friend A (a shipmate) his red box, clasp-knife and all things not before bequeathed. The testator's share in a house does not pass to A under this bequest.

(*c*) A, by his will, bequeathed to B all his household furniture, plate, linen, china, books, pictures and all other goods of whatever kind; and afterwards bequeathed to B a specified part of his property. Under the first bequest B is entitled only to such articles of the testator's as are of the same nature with the articles therein enumerated.

Which of two possible constructions preferred.

71. Where a clause is susceptible of two meanings, according to one of which it has some effect, and according to the other it can have none, the former is to be preferred.

No part rejected, if it can be reasonably construed.

72. No part of a will is to be rejected as destitute of meaning if it is possible to put a reasonable construction upon it.

Interpretation of words repeated in different parts of will.

73. If the same words occur in different parts of the same will, they must be taken to have been used everywhere in the same sense, unless there appears an intention to the contrary.

Sections 74-79.

Testator's intention to be effectuated as far as possible.

74. The intention of the testator is not to be set aside because it cannot take effect to the full extent, but effect is to be given to it as far as possible.

Illustration.

The testator by a will made on his death-bed bequeathed all his property to C. D. for life, and after his decease to a certain hospital. The intention of the testator cannot take effect to its full extent, because the gift to the hospital is void under the hundred and fifth section, but it shall take effect so far as regards the gift to C. D.

The last of two inconsistent clauses prevails.

75. Where two clauses or gifts in a will are irreconcilable so that they cannot possibly stand together, the last shall prevail.

Illustrations.

(*a*) The testator by the first clause of his will leaves his estate of Ramnagar "to A," and by the last clause of his will leaves it "to B and not to A." B shall have it.

(*b*) If a man at the commencement of his will gives his house to A, and at the close of it directs that his house shall be sold and the proceeds invested for the benefit of B, the latter disposition shall prevail.

Will or bequest void for uncertainty.

76. A will or bequest not expressive of any definite intention is void for uncertainty.

Illustration.

If a testator says—"I bequeath goods to A;" or "I bequeath to A;" or "I leave to A all the goods mentioned in a schedule," and no schedule is found; or "I bequeath 'money,' 'wheat,' 'oil'" or the like without saying how much, this is void.

Words describing subject refer to property answering description at testator's death.

77. The description contained in a will of property the subject of gift shall unless a contrary intention appear by the will be deemed to refer to and comprise the property answering that description at the death of the testator.

Power of appointment executed by general bequest.

78. Unless a contrary intention shall appear by the will a bequest of the estate of the testator shall be construed to include any property which he may have power to appoint by will to any object he may think proper and shall operate as an execution of such power;

and a bequest of property described in a general manner shall be construed to include any property to which such description may extend which he may have power to appoint by will to any object he may think proper and shall operate as an execution of such power.

Implied gift to objects of power in default of appointment.

79. Where property is bequeathed to or for the benefit of such of certain objects as a specified person shall appoint

or for the benefit of certain objects in such proportions as a specified person shall appoint and the will does not provide for the event of no appointment being made; if the power given by the will be not exercised the property belongs to all the objects of the power in equal shares.

Illustration.

A, by his will, bequeaths a fund to his wife for her life, and directs that at her death it shall be divided among his children in such proportions as she shall appoint. The widow dies without having made any appointment. The fund shall be divided equally among the children.

Bequest to "heirs," &c, of particular person without qualifying terms.

80. Where a bequest is made to the "heirs" or "right heirs" or "relations," or "nearest relations," or "family," or "kindred," or "nearest of kin," or "next of kin" of a particular person, without any qualifying terms, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person, and he had died intestate in respect of it, leaving assets for the payment of his debts independently of such property.

Illustrations.

(*a*) A leaves his property "to his own nearest relations." The property goes to those who would be entitled to it if A had died intestate, leaving assets for the payment of his debts independently of such property.

(*b*) A bequeaths 10,000 rupees "to B for his life, and after the death of B to his own right heirs." The legacy after B's death belongs to those who would be entitled to it if it had formed part of A's unbequeathed property.

(*c*) A leaves his property to B, but, if B dies before him, to B's next of kin: B dies before A; the property devolves as if it had belonged to B, and he had died intestate, leaving assets for the payment of his debts independently of such property.

(*d*) A leaves 10,000 rupees "to B for his life, and after his decease to the heirs of C." The legacy goes as if it had belonged to C, and he had died intestate, leaving assets for the payment of his debts independently of the legacy.

Bequest to "representatives," &c., of particular person.

81. Where a bequest is made to the "representatives," or "legal representatives," or "personal representatives," or "executors or administrators" of a particular person, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person, and he had died intestate in respect of it.

Sections 82-84.

Illustration.

A bequest is made to the "legal representatives" of A. A has died intestate and insolvent. B is his administrator. B, is entitled to receive the legacy, and shall apply it in the first place to the discharge of such part of A's debts as may remain unpaid: if there be any surplus, B shall pay it to those persons who at A's death would have been entitled to receive any property of A's which might remain after payment of his debts, or to the representatives of such persons.

Bequest without words of limitation.

82. Where property is bequeathed to any person, he is entitled to the whole interest of the testatator therein, unless it appears from the will that only a restricted interest was intended for him.

Bequest in alternative.

83. Where property is bequeathed to a person, with a bequest in the alternative to another person or to a class of persons if a contrary intention does not appear by the will, the legatee first named shall be entitled to the legacy, if he be alive at the time when it takes effect; but if he then dead the person or class of persons named in the second branch of the alternative shall take the legacy.

Illustrations.

(*a*) A bequest is made to A or to B. A survives the testator. B takes nothing.

(*b*) A bequest is made to A or to B. A dies after the date of the will, and before the testator. The legacy goes to B.

(*c*) A bequest is made to A or to B. A is dead at the date of the will. The legacy goes to B.

(*d*) Property is bequeathed to A or his heirs. A survives the testator. A takes the property absolutely.

(*e*) Property is bequeathed to A or his nearest of kin. A dies in the lifetime of the testator. Upon the death of the testator the bequest to A's nearest of kin takes effect.

(*f*) Property is bequeathed to A for life, and after his death to B or his heirs. A and B survive the testator. B dies in A's lifetime. Upon A's death the bequest to the heirs of B takes effect.

(*g*) Property is bequeathed to A for life, and after his death to B or his heirs. B dies in the testator's lifetime. A survives the testator. Upon A's death the bequest to the heirs of B takes effect.

Effect of words describing a class added to bequest to a person.

84. Where property is bequeathed to a person, and words are added which describe a class of persons, but do not denote them as direct objects of a distinct and independent gift, such person is entitled to the whole interest of the testator therein, unless a contrary intention appears by the will.

Illustrations.

(*a*) A bequest is made—

to A and his children,

to A and his children by his present wife,
to A and his heirs,
to A and his heirs of his body,
to A and the heirs male of his body,
to A and the heirs female of his body,
to A and his issue,
to A and his family,
to A and his descendants,
to A and his representatives,
to A and his personal representatives,
to A, his executors and administrators.

In each of these cases, A takes the whole interest which the testator had in the property.

(*b*) A bequest is made to A and his brothers. A and his brothers are jointly entitled to the legacy.

(*c*) A bequest is made to A for life, and after his death to his issue. At the death of A the property belongs in equal shares to all persons who shall then answer the description of issue of A.

Bequest to class of persons under general description only.

85. Where a bequest is made to a class of persons under a general description only, no one to whom the words of the description are not in their ordinary sense applicable shall take the legacy.

Construction of terms.

86. The word "children" in a will applies only to lineal descendants in the first degree;

the word "grandchildren" applies only to lineal descendants in the second degree of the person whose "children," or "grandchildren," are spoken of;

the words "nephews" and "nieces" apply only to children of brothers or sisters;

the words "cousins," or "first cousins," or "cousins-german," apply only to children of brothers or of sisters of the father or mother of the person whose "cousins," or "first cousins," or "cousins-german," are spoken of;

the words "first cousins once removed" apply only to children of cousins-german, or to cousins-german of a parent of the person whose "first cousins once removed" are spoken of;

the words "second cousins" apply only to grandchildren of brothers or of sisters of the grandfather or grandmother of the person whose "second cousins" are spoken of;

the words "issue" and descendants apply to all lineal descendants whatever of the person whose "issue" or "descendants" are spoken of.

Words expressive of collateral relationship apply alike to relatives of full and of half blood.

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All words expressive of relationship apply to a child in the womb who is afterwards born alive.

Words expressing relationship denote only legitimate relatives, or, failing such, relatives reputed legitimate.

87. In the absence of any intimation to the contrary in the will, the term "child," "son," or "daughter," or any word which expresses relationship, is to be understood as denoting only a legitimate relative, or, where there is no such legitimate relative, a person who has acquired, at the date of the will, the reputation of being such relative.

Illustrations.

(*a*) A, having three children, B, C and D, of whom B and C are legitimate, and D is illegitimate, leaves his property to be equally divided among his "children." The property belongs to B and C in equal shares, to the exclusion of D.

(*b*) A, having a niece of illegitimate birth, who has acquired the reputation of being his niece, and having no legitimate niece, bequeaths a sum of money to his niece. The illegitimate niece is entitled to the legacy.

(*c*) A, having in his will enumerated his children, and named as one of them B, who is illegitimate, leaves a legacy, to "his said children." B will take a share in the legacy along with the legitimate children.

(*d*) A leaves a legacy to "the children of B." B is dead, and has left none but illegitimate children. All those who had, at the date of the will, acquired the reputation of being the children of B are objects of the gift.

(*e*) A bequeathed a legacy to "the children of B." B never had any legitimate child. C and D had, at the date of the will, acquired the reputation of being children of B. After the date of the will, and before the death of the testator, E and F were born, and acquired the reputation of being children of B. Only C and D are objects of the bequest.

(*f*) A makes a bequest in favour of his child by a certain woman, not his wife. B had acquired, at the date of the will, the reputation of being the child of A by the woman designated. B takes the legacy.

(*g*) A makes a bequest in favour of his child to be born of a woman who never becomes his wife. The bequest is void.

(*h*) A makes a bequest in favour of the child of which a certain woman, not married to him, is pregnant. The bequest is valid.

Rules of construction where will purports to make two bequests to same person.

88. Where a will purports to make two bequests to the same person, and a question arises whether the testator intended to make the second bequest instead of or in addition to the first; if there is nothing in the will to show what he intended, the following rules shall prevail in determining the construction to be put upon the will:—

First.—If the same specific thing is bequeathed twice to the same legatee in the same will, or in the will and again in a codicil, he is entitled to receive that specific thing only.

Second.—Where one and the same will or one and the same codicil purports to make, in two places, a bequest to

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the same person of the same quantity or amount of anything, he shall be entitled to one such legacy only.

Third.—Where two legacies, of unequal amount, are given to the same person in the same will, or in the same codicil, the legatee is entitled to both.

Fourth.—Where two legacies, whether equal or unequal in amount, are given to the same legatee, one by a will and the other by a codicil, or each by a different codicil, the legatee is entitled to both legacies.

Explanation.—In the four last rules, the word "will" does not include a codicil.

Illustrations.

(*a*) A, having ten shares, and no more, in the Bank of Bengal, made his will, which contains near its commencement the words "I bequeath my ten shares in the Bank of Bengal to B." After other bequests, the will concludes with the words "and I bequeath my ten shares in the Bank of Bengal to B." B is entitled simply to receive A's ten shares in the Bank of Bengal.

(*b*) A, having one diamond ring, which was given him by B, bequeathed to C the diamond ring which was given him by B. A afterwards made a codicil to his will, and thereby, after giving other legacies, he bequeathed to C the diamond ring which was given him by B. C can claim nothing except the diamond ring which was given to A by B.

(*c*) A, by his will, bequeaths to B the sum of 5,000 rupees and afterwards, in the same will, repeats the bequest in the same words. B is entitled to one legacy of 5,000 rupees only.

(*d*) A, by his will, bequeaths to B the sum of 5,000 rupees, and afterwards, by the same will, bequeaths to B the sum of 6,000 rupees. B is entitled to 11,000 rupees.

(*e*) A, by his will, bequeaths to B 5,000 rupees, and by a codicil to the will, he bequeaths to him 5,000 rupees. B is entitled to receive 10,000 rupees.

(*f*) A, by one codicil to his will, bequeaths to B 5,000 rupees, and by another codicil, bequeaths to him 6,000 rupees. B is entitled to receive 11,000 rupees.

(*g*) A, by his will, bequeaths "500 rupees to B because she was his nurse" and in another part of the will bequeaths 500 rupees to B "because she went to England with his children." B is entitled to receive 1,000 rupees.

(*h*) A, by his will, bequeaths to B the sum of 5,000 rupees, and also, in another part of the will, an annuity of 400 rupees, B is entitled to both legacies.

(*i*) A, by his will, bequeaths to B the sum of 5,000 rupees, and also bequeaths to him the sum of 5,000 rupees if he shall attain the age of 18. B is entitled absolutely to one sum of 5,000 rupees, and takes a contingent interest in another sum of 5,000 rupees.

89. A residuary legatee may be constituted by any words that show an intention on the part of the testator

Constitution of residuary legatee.

Sections 90-92.

that the person designated shall take the surplus or residue of his property.

Illustrations.

(*a*) A makes her will, consisting of several testamentary papers, in one of which are contained the following words:—"I think there will be something left, after all funeral expenses, etc., to give to B, now at school, towards equipping him to any profession he may hereafter be appointed to." B is constituted residuary legatee.

(*b*) A makes his will, with the following passage at the end of it:—"I believe there will be found sufficient in my banker's hands to defray and discharge my debts, which I hereby desire B to do, and keep the residue for her own use and pleasure." B is consituted the residuary legatee.

(*c*) A bequeaths all his property to B, except certain stocks and funds, which he bequeaths to C. B is the residuary legatee.

Property to which residuary legatee entitled.

90. Under a residuary bequest, the legatee is entitled to all property belonging to the testator at the time of his death, of which he has not made any other testamentary disposition which is capable of taking effect.

Illustration.

A, by his will, bequeaths certain legacies, one of which is void under the hundred and fifth section, and another lapses by the death of the legatee. He bequeaths the residue of his property to B. After the date of his will, A purchases a zamindari, which belongs to him at the time of his death. B is entiled to the two legacies and the zamindari as part of the residue.

Time of vesting legacy in general terms.

91. If a legacy be given in general terms, without specifying the time when it is to be paid, the legatee has a vested interest in it from the day of the death of the testator and if he dies without having received it, it shall pass to his representatives.

In what case legacy apses.

92. If the legatee does not survive the testator, the legacy cannot take effect, but shall lapse and form part of the residue of the testator's property, unless it appear by the will that the testator intended that it should go to some other person.

In order to entitle the representatives of the legatee to receive the legacy, it must be proved that he survived the testator.

Illustrations.

(*a*) The testator bequeaths to B "500 rupees which B owes him." B dies before the testator; the legacy lapses.

(*b*) A bequest is made to A and his children. A dies before the testator, or happens to be dead when the will is made. The legacy to A and his children lapses.

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(*c*) A legacy is given to A, and, in case of his dying before the testator, to B. A dies before the testator. The legacy goes to B.

(*d*) A sum of money is bequeathed to A for life, and after his death to B. A dies in the lifetime of the testator; B survives the testator. The bequest to B takes effect.

(*e*) A sum of money is bequeathed to A on his completing his eighteenth year, and, in case he should die before he completes his eighteenth year, and, in case he should die before he completes his eighteenth year, to B. A completes his eighteenth year, and dies in the life time of the testator. The legacy to A lapses, and the bequest to B does not take effect.

(*f*) The testator and the legatee perished in the same shipwreck. There is no evidence to show which died first. The legacy will lapse.

Legacy does not lapse if one of two joint legatees die before testator.

93. If a legacy be given to two persons jointly, and one of them die before the testator, the other legatee takes the whole.

Illustration.

The legacy is simply to A and B. A dies before the testator. B takes the leagcy.

Effect of words showing testators' intention to give distinct shares.

94. But where a legacy is given to legatees in words which show that the testator intended to give them distinct shares of it, then if any legatee die before the testator, so much of the legacy as was intended for him shall fall into the residue of the testators' property.

Illustration.

A sum of money is bequeathed to A, B and C, to be equally divided among them. A dies before the testator. B and C shall only take so much as they would have had if A had survived the testator.

When lapsed share goes as undisposed of.

95. Where the share that lapses is a part of the general residue bequeathed by the will, that share shall go as undisposed of.

Illustration.

The testator bequeaths the residue of his estate to A, B and C, to be equally divided between them. A dies before the testator. His one-third of the residue goes as undisposed of.

When bequest to testator's child or lineal descendant does not lapse on his death in testator's lifetime.

96. Where a bequest shall have been made to any child or other lineal descendant of the testator, and the legatee shall die in the life-time of the testator, but any lineal descendant of his shall survive the testator, the bequest shall not lapse, but shall take effect as if the death of the legatee had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

Illustration.

A makes his will, by which he bequeaths a sum of money to his

son B for his own absolute use and benefit. B dies before A, leaving a son C who survives A, and having made his will whereby he bequeaths all his property to his widow D. The money goes to D.

Bequest to A for benefit of B does not lapse by A's death.

9. Where a bequest is made to one person for the benefit of another, the legacy does not lapse by the death, in the testator's lifetime, of the person to whom the bequest is made.

Survivorship in case of bequest to described class.

98. Where a bequest is made simply to a described class of persons, the thing bequeathed shall go only to such as shall be alive at the testator's death.

Exception.—If property is bequeathed to a class of persons described as standing in a particular degree of kindred to a specified individual, but their possession of it is deferred until a time later than the death of the testator, by reason of a prior bequest or otherwise, the property shall at that time go to such of them as shall be then alive, and to the representatives of any of them who have died since the death of the testator.

Illustrations.

(*a*) A bequeaths 1,000 rupees to "the children of B" without saying when it is to be distributed among them. B had died previous to the date of the will, leaving three children, C, D, and E. E died after the date of the will, but before the death of A. C and D survive A. The legacy shall belong to C and D, to the exclusion of the representatives of E.

(*b*) A bequeaths a legacy to the children of B. At the time of the testator's death, B has no children. The bequest is void.

(*c*) A lease for years of a house was bequeathed to A for his life, and after his decease to the children of B. At the death of the testator, B had two children living, C and D; and he never had any other child. Afterwards, during the lifetime of A, C died, leaving E his executor. D has survived A. D and E are jointly entitled to so much of the leasehold term as remains unexpired.

(*d*) A sum of money was bequeathed to A for her life, and after her decease to the children of B. At the death of the testator, B had two children living, C and D, and after that event, two children, E and F, were born to B, C and E died in the lifetime of A, C having made a will, E having made no will. A has died, leaving D and F surviving her. The legacy is to be divided into four equal parts, one of which is to be paid to the executor of C, one to D, one to the administrator of E, and one to F.

(*e*) A bequeaths one-third of his lands to B for his life, and after his decease to the sisters of B. At the death of the testator, B had two sisters living, C and D, and after that event another sister E was born. C died during the life of B; D and E have survived B. One-third of A's lands belongs to D, E and the representatives of C, in equal shares.

(*f*) A bequeaths 1,000 rupees to B for life, and after his death equally among the children of C. Up to the death of B, C had not had any child. The bequest after the death of B is void.

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(*b*) A bequeaths 1,000 rupees to "all the children born or to be born" of B, to be divided among them at the death of C. At the death of the testator, B has two children living, D and E. After the death of the testator, but in the lifetime of C, two other children, F and G, are born to B. After the death of C, another child is born to B. The legacy belongs to D, E, F and G, to the exclusion of the afterborn child of B.

(*c*) A bequeaths a fund to the children of B, to be divided among them when the eldest shall attain majority. At the testator's death B had one child living, named C. He afterwards had two other children, named D and E. E died, but C and D were living when C attained majority. The fund belongs to C, D and the representatives of E, to the exclusion of any child who may be born to B after C's attaining majority.

PART XII.

OF VOID BEQUESTS.

Bequest to person by particular description who is not in existence at testator's death.

99. Where a bequest is made to a person by a particular description, and there is no person in existence at the testator's death who answers the description, the bequest is void.

Exception.—If property is bequeathed to a person described as standing in a particular degree of kindred to a specified individual, but his possession of it is deferred until a time later than the death of the testator, by reason of a prior bequest, or otherwise; and if a person answering the description is alive at the death of the testator, or comes into existence between that event and such later time, the property shall, at such later time, go to that person, or, if he be dead, to his representatives.

Illustrations.

(*a*) A bequeaths 1,000 rupees to the eldest son of B. At the death of the testator, B has no son. The bequest is void.

(*b*) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son of C. At the death of the testator, C had no son. Afterwards, during the life of B, a son is born to C. Upon B's death, the legacy goes to C's son.

(*c*) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son of C. At the death of the testator, C had no son; afterwards, during the life of B, a son, named D, is born to C. D dies, then, B dies. The legacy goes to the representative of D.

(*d*) A bequeaths his estate of Greenacre to B for life, and at his decease to the eldest son of C. Up to the death of B, C has had no son. The bequest to C's eldest son is void.

(*e*) A bequeaths 1,000 rupees to the eldest son of C, to be paid to him after the death of B. At the death of the testator, C has no son, but a son is afterwards born to him during the life of B and is alive at B's death. C's son is entitled to the 1,000 rupees.

Sections 100-101.

Bequest to person not in existence at testator's death, subject to prior bequest.

100. Where a bequest is made to a person not in existence at the time, of the testator's death, subject to a prior bequest contained in the will, the later bequest shall be void, unless it comprises the whole of the remaining interest of the testator in the thing bequeathed.

Illustrations.

(*a*) Property is bequeathed to A for his life, and after his death to his eldest son for life and after the death of the latter to his eldest son. At the time of the testator's death, A has no son. Here the bequest to A's eldest son is a bequest to a person not in existence at the testator's death. It is not a bequest of the whole interest that remains to the testator. The bequest to A's eldest son for his life is void.

(*b*) A fund is bequeathed to A for his life, and after his death to his daughters. A survives the testator. A has daughters, some of whom were not in existence at the testator's death. The bequest to A's daughters comprises the whole interest that remains to the testator in the thing bequeathed. The bequest to A's daughters is valid.

(*c*) A fund is bequeathed to A for his life, and after his death to his daughters, with a direction that, if any of them marries under the age of eighteen, her portion shall be settled so that it may belong to herself for life, and may be divisible among her children after her death. A has no daughters living at the time of the testator's death, but has daughters born afterwards who survive him. Here the direction for a settlement has the effect, in the case of each daughter who marries under eighteen, of substituting for the absolute bequest to her a bequest to her merely for her life; that is to say, a bequest to a person not in existence at the time of the testator's death of something which is less than the whole interest that remains to the testator in the thing bequeathed. The direction to settle the fund is void.

(*d*) A bequeaths a sum of money to B for life, and directs that upon the death of B the fund shall be settled upon his daughters, so that the portion of each daughter may belong to herself for life, and may be divided among her children after her death. B has no daughter living at the time of the testator's death. In this case the only bequest to the daughters of B is contained in the direction to settle the fund, and this direction amounts to a bequest, to persons not yet born, of a life-interest in the fund, that is to say, of some thing which is less than the whole interest that remains to the testator in the thing bequeathed. The direction to settle the fund upon the daughters of B is void.

Rule against perpetuity.

101. No bequest is valid whereby the vesting of the thing bequeathed may be delayed beyond the lifetime of one or more persons living at the testator's decease, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the thing bequeathed is to belong.

Illustrations.

(*a*) A fund is bequeathed to A for his life; and after his death to B for his life; and after B's death to such of the sons of B as shall first attain the age of 25. A and B survive the testator. Here the son of B

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who shall first attain the age of 25 may be a son born after the death of the testator; such son may not attain 25 until more than 18 years have elapsed from the death of the longer liver of A and B; and the vesting of the fund may thus be delayed beyond the lifetime of A and B and the minority of the sons of B. The bequest after B's death is void.

(*b*) A fund is bequeathed to A for his life, and after his death to B for his life, and after B's death to such of B's sons as shall first attain the age of 25. B dies in the lifetime of the testator, leaving one or more sons. In this case the sons of B are persons living at the time of the testator's decease, and the time when either of them will attain 25 necessarily falls within his own lifetime. The bequest is valid.

(*c*) A fund is bequeathed to A for his life, and after his death to B for his life, with a direction that after B's death it shall be divided among such of B's children as shall attain the age of 18, but that if no child of B shall attain that age, the fund shall go to C. Here the time for the division of the fund must arrive at the latest at the expiration of 18 years from the death of B, a person living at the testator's decease. All the bequests are valid.

(*d*) A fund is bequeathed to trustees for the benefit of the testator's daughters, with a direction that, if any of them marry under age, her share of the fund shall be settled so as to devolve after her death upon such of her children as shall attain the age of 18. Any daughter of the testator to whom the direction applies must be in existence at his decease, and any portion of the fund which may eventually be settled as directed must vest not later than 18 years from the death of the daughter whose share it was. All these provisions are valid.

Bequest to a class some of whom may come under rules in Sections 100 and 101.

102. If a bequest is made to a class of persons, with regard to some of whom it is inoperative by reason of the rules contained in the two last preceding sections, or either of them, such bequest shall be [void in regard to those persons only and not in regard to the whole class.]

Illustrations.

(*a*) A fund is bequeathed to A for life, and after his death to all his children who shall attain the age of 25. A survives the testator, and has some children living at the testator's death. Each child of A's living at the testator's death must attain the age of 25 (if at all) within the limits allowed for a bequest. But A may have children after the testator's decease, some of whom may not attain the age of 25 until more than 18 years have elapsed after the decease of A. The bequest to A's children, therefore, is inoperative as to any child born after the testator's death; [and in regard to those who do not attain the age of 25 within 18 years after A's death, but is operative in regard to the other children of A.]

(*b*) A fund is bequeathed to A for his life, and after his death to B, C, D and all other children of A who shall attain the age of 25. B, C, D are children of A living at the testator's decease. In all other respects the case is the same as that supposed in illustration (*a*). [Although the mention of B, C and D does not prevent the bequest from being regarded as a bequest to a class, it is not wholly void. It is operative as regards any of the children B, C or D, who attains the age of 25 within 18 years after A's death.]

[ ] These words were substituted by sub-section (1) of Section 4 of Act XVII of 1938.

Sections 103-104.

Bequest to take effect on failure of prior bequest.

[**103.** Where by reason of any of the rules contained in sections 100 and 101 any bequest in favour of a person or of a class of persons is void in regard to such person or the whole of such class, any bequest contained in the same will and intended to take effect after or upon failure of such prior bequest is also void.]

Illustrations.

(*a*) A fund is bequeathed to A for his life, and after his death to such of his sons as shall first attain the age of 25, for his life, and after the decease of such son to B. A and B survive the testator. The bequest to B is intended to take effect after the bequest to such of the sons of A as shall first attain the age of 25, which bequest is void under Section 101. The bequest to B is void.

(*b*) A fund is bequeathed to A for his life, and after his death to such of his sons as shall first attain the age of 25, and, if no son of A shall attain that age, to B. A and B survive the testator. The bequest to B is intended to take effect upon failure of the bequest to such of A's sons as shall first attain the age of 25, which bequest is void under Section 101. The bequest to B is void.

Effect of direction for accumulation.

§**104.** (1) Where the terms of a will direct that the income arising from any property shall be accumulated either wholly or in part during any period longer than a period of eighteen years from the death of the testator, such direction shall, save as hereinafter provided, be void to the extent to which the period during which the accumulation is directed exceeds the aforesaid period, and at the end of such period of eighteen years the property and the income thereof shall be disposed of as if the period during which the accumulation has been directed to be made had elapsed.

(2) This section shall not affect any direction for accumulation for the purpose of—

(i) the payment of the debts of the testator or the other person taking any interest under the will, or

(ii) the provision of portions for children or remoter issue of the testator or of any other person taking any interest under the will, or

(iii) the preservation or maintenance of any property bequeathed;

and such direction may be made accordingly.§

[ ] Substituted for the original by sub-section (2) of Section 4 of Act XVII of 1938.

§ § Substituted for the original para by sub-section (3) of Section 4 of Act XVII of 1938.

Sections 105-106.

Bequest to religious or charitable uses.

105. No man having a nephew or niece or any nearer relative shall have power to bequeath any property to religious or charitable uses, except by a will executed not less than twelve months before his death, and deposited within six months from its execution in some place provided by law for the safe custody of the wills of living persons.

Illustration.

A having a nephew makes a bequest by a will not executed nor deposted as required—

for the relief of poor people;
for the maintenance of sick soldiers;
for the erection or support of a hospital;
for the education and preferment of orphans;
for the support of scholars;
for the erection or support of a school;
for the building and repairs of a bridge;
for the making of roads;
for the erection or support of a church;
for the repairs of a church;
for the benefit of ministers of religion;
for the formation or support of a public garden.

All these bequests are void.

PART XIII.

OF THE VESTING OF LEGACIES.

Date of vesting of legacy when payment or possession postponed.

106. Where by the terms of a bequest the legatee is not entitled to immediate possession of the thing bequeathed a right to receive it at the proper time shall, unless a contrary intention appears by the will become vested in the legatee on the testator's death, and shall pass to the legatee's representatives if he dies before that time and without having received the legacy.

And in such cases the legacy is from the testator's death said to be vested in interest.

Explanation.—An intention that a legacy to any person shall not become vested in interest in him is not to be inferred merely from a provision whereby the payment or possession of the thing bequeathed is postponed, or whereby

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a prior interest therein is bequeathed to some other person, or whereby the income arising from the fund bequeathed is directed to be accumulated until the time of payment arrives, or from a provision that, if a particular event shall happen, the legacy shall go over to another person.

Illustrations.

(*a*) A bequeaths to B 100 rupees, to be paid to him at the death of C. On A's death the legacy becomes vested in interest in B, and if he dies before C, his representatives are entitled to the legacy.

(*b*) A bequeaths to B 100 rupees, to be paid to him upon his attaining the age of 18. On A's death the legacy becomes vested in interest in B.

(*c*) A fund is bequeathed to A for life, and after his death to B. On the testator's death the legacy to B becomes vested in interest in B.

(*d*) A fund is bequeathed to A until B attains the age of 18, and then to B. The legacy to B is vested in interest from the testator's death.

(*e*) A bequeaths the whole of his property to B upon trust to pay certain debts out of the income, and then to make over the fund to C. At A's death the gift to C becomes vested in interest in him.

(*f*) A fund is bequeathed to A, B and C in equal shares, to be paid to them on their attaining the age of 18 respectively, with a proviso that, if all of them die under the age of 18, the legacy shall devolve upon D. On the death of the testator, the shares vest in interest in A, B and C, subject to be divested in case A, B and C, shall all die under 18, and, upon the death of any of them (except the last survivor) under the age of 18, his vested interest passes, so subject, to his representatives.

Date of vesting when legacy contingent upon specified uncertain event.

107. A legacy bequeathed in case a specified uncertain event shall happen does not vest until that event happens.

A legacy bequeathed in case a specified uncertain event shall not happen does not vest until the happening of that event becomes impossible.

In either case, until the condition has been fulfilled, the interest of the legatee is called contingent.

Exception.—Where a fund is bequeathed to any person upon his attaining a particular age, and the will also gives to him absolutely the income to arise from the fund before he reaches that age, or directs the income, or so much of it as may be necessary, to be applied for his benefit, the bequest of the fund is not contingent.

Illustrations.

(*a*) A legacy is bequeathed to D in case A, B and C shall all die under the age of 18. D has a contingent interest in the legacy until A, B and C all die under 18 or one of them attains that age.

Section 108.

(*b*) A sum of money is bequeathed to A "in case he shall attain the age of 18," or, "when he shall attain the age of 18." A's interest in the legacy is contingent until the condition shall be fulfilled by his attaining that age.

(*c*) An estate is bequeathed to A for life, and after his death to B, if B shall then be living; but if B shall not be then living, to C. A, B and C survive the testator. B and C each take a contingent interest in the estate until the event which is to vest it in one or in the other shall have happened.

(*d*) An estate is bequeathed as in the case last supposed. B dies in the lifetime of A and C. Upon the death of B, C acquires a vested right to obtain possession of the estate upon A's death.

(*e*) A legacy is bequeathed to A when he shall attain the age of 18, or shall marry under that age with the consent of B, with a proviso that, if she shall not attain 18, or marry under that age with B's consent the legacy shall go to C. A and C each take a contingent interest in the legacy. A attains the age of 18. A becomes absolutely entitled to the legacy, although she may have married under 18 without the consent of B.

(*f*) An estate is bequeathed to A until he shall marry, and after that event to B. B's interest in the bequest is contingent until the condition shall be fulfilled by A's marrying.

(*g*) An estate is bequeathed to A until he shall take advantage of the Act for the Relief of Insolvent Debtors, and after that event to B. B's interest in the bequest is contingent until A takes advantage of the Act.

(*h*) An estate is bequeathed to A if he shall pay 500 rupees to B. A's interest in the bequest is contingent until he has paid 500 rupees to B.

(*i*) A leaves his farm of Sultanpur Khurd to B, if B shall convey his own farm of Sultanpur Buzurg to C. B's interest in the bequest is contingent until he has conveyed the latter farm to C.

(*j*) A fund is bequeathed to A if B shall not marry C within five years after the testator's death. A's interest in the legacy is contingent until the condition shall be fulfilled by the expiration of the five years without B's having married C, or by the occurrence, within that period, of an event which makes the fulfilment of the condition impossible.

(*k*) A fund is bequeathed to A if B shall not make any provision for him by will. The legacy is contingent until B's death.

(*l*) A bequeaths to B 500 rupees a year upon his attaining the age of 18, and directs that the interest, or a competent part thereof, shall be applied for his benefit until he reaches that age. The legacy is vested.

(*m*) A bequeaths to B 500 rupees when he shall attain the age of 18, and directs that a certain sum, out of another fund, shall be applied for his maintenance until he arrives at that age. The legacy is contingent.

108. Where a bequest is made only to such members of a class as shall have attained a particular age, a person who has not attained that age cannot have a vested interest in the legacy.

Vesting of interest in bequest to such members of a class as shall have attained particular age.

Sections 109-111.

Illustration.

A fund is bequeathed to such of the children of A as shall attain the age of 18, with a direction that, while any child of A shall be under the age of 18, the income of the share, to which it may be presumed he will be eventually entitled, shall be applied for his maintenance and education. No child of A who is under the age of 18 has a vested interest in the bequest.

PART XIV.

OF ONEROUS BEQUESTS.

Onerous bequest.

109. Where a bequest imposes an obligation on the legatee, he can take nothing by it unless he accepts it fully.

Illustration.

A having share in (X), a prosperous joint stock company, and also shares in (Y), a joint stock company in difficulties, in respect of which shares heavy calls are expected to be made, bequeaths to B all his shares in joint stock companies. B refuses to accept the shares in (Y). He forfeits the shares in (X).

One of two separate and independent bequests to same person may be accepted, and the other refused.

110. Where a will contains two separate and independent bequests to the same person, the legatee is at liberty to accept one of them and refuse the other, although the former may be beneficial and the latter onerous.

Illustration.

A having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is higher than the house can be let for, bequeaths to B the lease and a sum of money. B refuses to accept the lease. He shall not by this refusal forfeit the money.

PART XV.

OF CONTINGENT BEQUESTS.

Bequest contingent upon specified uncertain event, no time being mentioned for its occurrence.

111. Where a legacy is given if a specified uncertain event shall happen, and no time is mentioned in the will for the occurrence of that event, the legacy cannot take effect unless such event happens before the period when the fund bequeathed is payable or distributable.

Illustrations.

(*a*) A legacy is bequeathed to A, and in case of his death, to B. If A survives the testator, the legacy to B does not take effect.

(*b*) A legacy is bequeathed to A, and in case of his death wilhout children, to B. If A survives the testator or dies in his lifetime leaving a child, the legacy to B does not take effect.

Sections 112-114.

(*c*) A legacy is bequeathed to A when and if he attains the age of 18, and in case of his death, to B. A attains the age of 18. The legacy to B does not take effect.

(*d*) A legacy is bequeathed to A for life, and after his death to B, and "in case of B's death without children," to C. The words "in case of B's death without children" are to be understood as meaning in case B shall die without children during the lifetime of A.

(*e*) A legacy is bequeathed to A for life, and after his death to B and, "in case of B's death," to C. The words "in case of B's death" are to be considered as meaning "in case B shall die in the lifetime of A".

Bequest to such of certain persons as shall be surviving at some period not specified.

112. Where a bequest is made to such of certain persons as shall be surviving at some period, but the exact period is not specified, the legacy shall go to such of them as shall be alive at the time of payment or distribution, unless a contrary intention appear by the will.

Illustrations.

(*a*) Property is bequeathed to A and B, to be equally divided between them, or to the survivor of them. If both A and B survive the testator, the legacy is equally divided between them. If A dies before the testator and B survives the testator, it goes to B.

(*b*) Property is bequeathed to A for life, and after his death to B and C, to be equally divided between them, or to the survivor of them. B dies during the life of A; C survives A. At A's death the legacy goes to C.

(*c*) Property is bequeathed to A for life, and after his death to B and C, or the survivor, with a direction that, if B should not survive the testator, his children are to stand in his place. C dies during the life of the testator; B survives the testator, but dies in the lifetime of A. The legacy goes to the representative of B.

(*d*) Property is bequeathed to A for life, and after his death to B and C, with a direction that, in case either of them dies in the lifetime of A, the whole shall go to the survivor. B dies in the lifetime of A. Afterwards C dies in the lifetime of A. The legacy goes to the representative of C.

PART XVI.

OF CONDITIONAL BEQUESTS.

Bequest upon impossible condition.

113. A bequest upon an impossible condition is void.

Illustrations.

(*a*) An estate is bequeathed to A on condition that he shall walk one hundred miles in an hour. The bequest is void.

(*b*) A bequeaths 500 rupees to B on condition that he shall marry A's daughter. A's daughter was dead at the date of the will. The bequest is void.

Bequest upon illegal or immoral condition.

114. A bequest upon a condition, the fulfilment of which would be contrary to law or to morality, is void.

Sections 115-116.

Illustrations.

(*a*) A bequeaths 500 rupees to B on condition that he shall murder C. The bequest is void.

(*b*) A bequeaths 5,000 rupees to his niece if she will desert her husband. The bequest is void.

Fulfilment of condition precedent to vesting of legacy.

115. Where a will imposes a condition to be fulfilled before the legatee can take a vested interest in the thing bequeathed, the condition shall be considered to have been fulfilled if it has been substantially complied with.

Illustrations.

(*a*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C, D and E. A marries with the written consent of B. C is present at the marriage. D sends a present to A previous to the marriage. E has been personally informed by A of his intentions, and has made no objection. A has fulfilled the condition.

(*b*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. D dies A marries with the consent of B and C. A has fulfilled the condition.

(*c*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A marries in the lifetime of B, C and D, with the consent of B and C only. A has not fulfilled the condition.

(*d*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A obtains the unconditional assent of B, C and D to his marriage with E. Afterwards B, C and D capriciously retract their consent. A marries E. A has fulfilled the condition.

(*e*) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C and D. A marries without the consent of B, C and D, but obtains their consent after the marriage. A has not fulfilled the condition.

(*f*) A makes his will, whereby he bequeaths a sum of money to B, if B shall marry with the consent of A's executors. B marries during the lifetime of A, and A afterwards expresses his approbation of the marriage. A dies. The bequest to B takes effect.

(*g*) A legacy is bequeathed to A if he executes a certain document within a time specified in the will. The document is executed by A within a reasonable time, but not within the time specified in the will. A has not performed the condition, and is not entitled to receive the legacy.

Bequest to A, and, on failure of prior bequest, to B.

116. Where there is a bequest to one person and a bequest of the same thing to another, if the prior bequest shall fail, the second bequest shall take effect upon the failure of the prior bequest, although the failure may not have occurred in the manner contemplated by the testator.

Illustrations.

(*a*) A bequeaths a sum of money to his own children surviving him, and, if they all die under 18 to B. A dies without having ever had a child. The bequest to B takes effect.

Sections 117-118.

(*b*) A bequeaths a sum of money to B, on condition that he shall execute a certain document within three months after A's death, and, if he should neglect to do so, to C. B dies in the testator's lifetime. The bequest to C takes effect.

When second bequest not to take effect on failure of first.

117. Where the will shows an intention that the second bequest shall take effect only in the event of the first bequest failing in a particular manner, the second bequest shall not take effect unless the prior bequest fails in that particular manner.

Illustration.

A makes a bequest to his wife, but, in case she should die in his lifetime, bequeaths to B that which he had bequeathed to her. A and his wife perish together, under circumstances which make it impossible to prove that she died before him. The bequest to B does not take effect.

Bequest over, conditional upon the happening or not happening of specified uncertain event.

118. A bequest may be made to any person with the condition superadded that in case a specified uncertain event shall happen, the thing bequeathed shall go to another person; or, that in case a specified uncertain event shall not happen, the thing bequeathed shall go over to another person.

In each case the ulterior bequest is subject to the rules contained in Sections 107, 108, 109, 110, 111, 112, 113, 114, 116, 117.

Illustrations.

(*a*) A sum of money is bequeathed to A, to be paid to him at the age of 18, and, if he shall die before he attains that age, to B. A takes a vested interest in the legacy, subject to be divested and to go to B in case A shall die under 18.

(*b*) An estate is bequeathed to A with a proviso that if A shall dispute the competency of the testator to make a will, the estate shall go to B. A disputes the competency of the testator to make a will. The estate goes to B.

(*c*) A sum of money is bequeathed to A for life, and after his death to B, but if B shall then be dead, leaving a son, such son is to stand in the place of B. B takes a vested interest in the legacy, subject to be divested if he dies leaving a son in A's lifetime.

(*d*) A sum of money is bequeathed to A and B, and if either should die during the life of C, then to the survivor living at the death of C. A and B die before C. The gift over cannot take effect, but the representative of A takes one half of the money, and the representative of B takes the other half.

(*e*) A bequeaths to B the interest of a fund for life, and directs the fund to be divided, at her death, equally among her three children, or such of them as shall be living at her death. All the children of B die in B's lifetime. The bequest over cannot take effect, but the interests of the children pass to their representatives.

Sections 119-121.

Condition must be strictly fulfilled.

119. An ulterior bequest of the kind contemplated by the last preceding section cannot take effect, unless the condition is strictly fulfilled.

Illustrations.

(*a*) A legacy is bequeathed to A, with a proviso that, if he marries without the consent of B, C and D, the legacy shall go to E. D dies. Even if A marries without the consent of B and C, the gift to E does not take effect.

(*b*) A legacy is bequeathed to A, with a proviso that, if he marries without the consent of B, the legacy shall go to C. A marries with the consent of B. He afterwards becomes a widower and marries again without the consent of B. The bequest to C does not take effect.

(*c*) A legacy is bequeathed to A, to be paid at 18, or marriage, with a proviso that, if A dies under 18, or marries without the consent of B, the legacy shall go to C. A marries under 18, without the consent of B. The bequest to C takes effect.

Original bequest not affected by invalidity of second.

120. If the ulterior bequest be not valid, the original bequest is not affected by it.

Illustrations.

(*a*) An estate is bequeathed to A for his life, with a condition superadded that, if he shall not on a given day walk 100 miles in an hour, the estate shall go to B. The condition being void, A retains his estate as if no condition had been inserted in the will.

(*b*) An estate is bequeathed to A for her life, and, if she does not desert her husband, to B. A is entitled to the estate during her life as if no condition had been inserted in the will.

(*c*) An estate is bequeathed to A for life, and, if he marries, to the eldest son of B for life. B, at the date of the testator's death had not a son. The bequest over is void under section 92, and A is entitled to the estate during his life.

Bequest conditioned that it shall cease to have effect in case a specified uncertain event shall happen, or not happen.

121. A bequest may be made with the condition superadded that it shall cease to have effect in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

Illustrations.

(*a*) An estate is bequeathed to A for his life, with a proviso that, in case he shall cut down a certain wood, the bequest shall cease to have any effect. A cuts down the wood. He loses his life-interest in the estate.

(*b*) An estate is bequeathed to A, provided that, if he marries under the age of 25 without the consent of the executors named in the will, the estate shall cease to belong to him. A marries under 25 without the consent of the executors. The estate ceases to belong to him.

(*c*) An estate is bequeathed to A, provided that, if he shall not go to England within three years after testator's death, his interest in the estate shall cease. A does not go to England within the time prescribed. His interest in the estate ceases.

Sections 122-124.

(*d*) An estate is bequeathed to A, with a proviso that, if she becomes a nun she shall cease to have any interest in the estate. A becomes a nun. She loses her interest under the will.

(*e*) A fund is bequeathed to A for life, and after his death to B, if B shall be then living, with a proviso that, if B shall become a nun, the bequest to her shall cease to have any effect. B becomes a nun in the lifetime of A. She thereby loses her contingent interest in the fund.

Such condition must not be invalid under section 107.

122. In order that a condition that a bequest shall cease to have effect may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of a bequest as contemplated by the one hundred and seventh section.

Result of legatee rendering impossible or indefinitely postponing act for which no time specified, and on non-performance of which subject matter to go over.

123. Where a bequest is made with a condition superadded that unless the legatee shall perform a certain act, the subject matter of the bequest shall go to another person, or the bequest shall cease to have effect; but no time is specified for the performance of the act; if the legatee takes any step which renders impossible or indefinitely postpones the performance of the act required, the legacy shall go as if the legatee had died without performing such act.

Illustrations.

(*a*) A bequest is made to A with a proviso that, unless he enters the army, the legacy shall go over to B. A takes holy orders and thereby renders it impossible that he should fulfil the condition. B is entitled to receive the legacy.

(*b*) A bequest is made to A with a proviso that it shall cease to have any effect if he does not marry B's daughter, A marries a stranger, and thereby indefinitely postpones the fulfilment of the condition. The bequest ceases to have effect.

Performance of condition precedent or subsequent within specified time.

Further time in case of fraud.

124. Where the will requires an act to be performed by the legatee within a specified time either as a condition to be fulfilled before the legacy is enjoyed or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person or the bequest is to cease to have effect; the act must be performed within the time specified unless the performance of it be prevented by fraud, in which case such further time shall be allowed as shall be requisite to make up for the delay caused by such fraud.

Sections 125-127.

PART XVII.

OF BEQUESTS WITH DIRECTIONS AS TO APPLICATION OR ENJOYMENT.

Direction that fund be employed in particular manner following absolute bequest of same to or for benefit of any person.

125. Where a fund is bequeathed absolutely to or for the benefit of any person but the will contains a direction that it shall be applied or enjoyed in a particular manner the legatee shall be entitled to receive the fund as if the will had contained no such direction.

Illustration.

A sum of money is bequeathed towards purchasing a country residence for A, or to purchase an annuity for A, or to purchase a commission in the Army for A, or to place A, in any business. A chooses to receive the legacy in money. He is entitled to do so.

Direction that mode of enjoyment of absolute bequest is to be restricted, to secure specified benefit for legatee.

126. Where a testator absolutely bequeaths a fund so as to sever it from his own estate but directs that the mode of enjoyment of it by the legatee shall be restricted so as to secure a specified benefit for the legatee; if that benefit cannot be obtained for the legatee, the fund belongs to him as if the will had contained no such direction.

Illustrations.

(*a*) A bequeaths the residue of his property to be divided equally among his daughters, and directs that the shares of the daughters shall be settled upon themselves respectively for life, and be paid to their children after their death. All the daughters die unmarried. The representatives of each daughter are entitled to her share of the residue.

(*b*) A directs his trustees to raise a sum of money for his daughter and he then directs that they shall invest the fund, and pay the income arising from it to her during her life, and divide the principal among her children after her death. The daughter dies without having ever had a child. Her representatives are entitled to the fund.

Request of a fund for certain purposes, some of which cannot be fulfilled.

127. Where a testator does not absolutely bequeath a fund, so as to sever it from his own estate, but gives it for certain purposes, and part of those purposes cannot be fulfilled, the fund, or so much of it as has not been exhausted upon the objects contemplated by the will, remains a part of the estate of the testator.

Illustrations.

(*a*) A directs that his trustees shall invest a sum of money in a particular way, and shall pay the interest to his son for life, and at his death shall divide the principal among his children; the son dies without having ever had a child. The fund after the son's death, belongs to the estate of the testator.

Sections 128-129.

(*b*) A bequeaths the residue of his estate to be divided equally among his daughters, with a direction that they are to have the interest only during their lives, and that at their decease the fund shall go to their children. The daughters have no children. The fund belongs to the estate of the testator.

PART XVIII.

OF BEQUESTS TO AN EXECUTOR.

Legatee named as executor cannot take unless he shows intention to act as executor.

128. If a legacy is bequeathed to a person who is named an executor of the will, he shall not take the legacy unless he proves the will or otherwise manifests an intention to act as executor.

Illustration.

A legacy is given to A, who is named an executor. A orders the funeral according to the directions contained in the will, and dies a few days after the testator, without having proved the will. A has manifested an intention to act as executor.

PART XIX.

OF SPECIFIC LEGACIES.

Specific legacy defined.

129. Where a testator bequeaths to any person a specified part of his property, which is distinguished from all other parts of his property, the legacy is said to be specific.

Illustrations.

(*a*) A bequeaths to B—

"diamond ring presented to him by C:"

"his gold chain:"

"a certain bale of wool:"

"a certain piece of cloth:"

"all his household goods which shall be in or about his dwelling-house in M street, in Calcutta, at the time of his death:"

"the sum of 1,000 rupees in a certain chest:',

"the debt which B owes him:"

"all his bills, bonds and securities belonging to him lying in his lodgings in Calcutta:"

"all his furniture in his house in Calcutta:"

"all his goods on board a certain ship then lying in the river Hugli."

"2,000 rupees which he has in the hands of C."

"the money due to him on the bond of D:"

"his mortgage on the Rampore factory:"

"one-half the money owing to him on his mortgage of Rampore factory:"

"1,000 rupees, being part of a debt due to him from C;"

Section 129.

"his capital stock of 1,000 *l.* in East India Stock:"
"his promissory notes of the Government of India, for 10,000 rupees in their 4 per cent loan:"
"all such sums of money as his executors may, after his death, receive in respect of the debt due to him from the insolvent firm of D and Company:"
"all the wine which he may have in his cellar at the time of his death;"
"such of his horses as B may select:"
"all his shares in the Bank of Bengal:"
"all the shares in the Bank of Bengal which he may possess at the time of his death:"
"all the money which he has in the 5½ per cent loan of the Government of India;"
"all the Government securities he shall be entitled to at the time of his decease:"

Each of these legacies is specific.

(*b*) A, having Government promissory notes for 10,000 rupees, bequeaths to his executor "Government promissory notes for 10,000 rupees in trust to sell" for the benefit of B. The legacy is specific.

(*c*) A, having property at Benares, and also in other places, bequeaths to B all his property at Benares. The legacy is specific.

(*d*) A bequeaths to B—
his house in Calcutta:
his zamindari of Rampore:
his taluk of Ramnagar:
his lease of the Indigo-factory of Salkya:
an annuity of 500 rupees out of the rents of his zamindari of W.

A directs his zamindari of X to be sold, and the proceeds to be invested for the benefit of B.

Each of these bequests is specific.

(*e*) A by his will charges his zamindari of Y with an annuity of 1,000 rupees to C during his life, and subject to this charge he bequeaths the zamindari to D. Each of these bequests is specific.

(*f*) A bequeaths a sum of money—
to buy a house in Calcutta for B:
to buy an estate in zillah Faridpore for B:
to buy a diamond ring for B:
to buy a horse for B:
to be invested in shares in the Bank of Bengal for B:
to be invested in Government securities for B:

A bequeaths to B—
"a diamond ring:"
"a horse:"
"10,000 rupees worth of Government securities:"
"an annuity of 500 rupees:"
"2,000 rupees, to be paid in cash:"
"so much money as will produce 5,000 rupees 4 per cent. Government securities."

These bequeaths are not specific.

Sections 130-134.

(*g*) A having property in England and property in India, bequeaths a legacy to B, and directs that it shall be paid out of the property which he may leave in India. He also bequeaths a legacy to C, and directs that it shall be paid out of the property which he may leave in England. No one of these legacies is specific.

Bequest of sum certain where stocks, etc., in which invested are described.

130. Where a sum certain is bequeathed, the legacy is not specific merely because the stocks, funds or securities in which it is invested are described in the will.

Illustration.

A bequeaths to B—

"10,000 rupees of his funded property:"

"10,000 rupees of his property now invested in shares of the East Indian Railway Company:"

"10,000 rupees at present secured by mortgage of Rampore factory."

No one of these legacies is specific.

Bequest of stock where testator had at date of will equal or greater amount of stock of same kind.

131. Where a bequest is made in general terms, of a certain amount of any kind of stock, the legacy is not specific merely because the testator was at the date of his will, possessed of stock of the specified kind, to an equal or greater amount than the amount bequeathed.

Illustration.

A bequeaths to B 5,000 rupees five per cent Government securities. A had at the date of the will five per cent Government securities for 5,000 rupees. The legacy is not specific.

Bequest of money where not payable until part of testator's property disposed of in certain way.

132. A money legacy is not specific merely because the will directs its payment to be postponed until some part of the property of the testator shall have been reduced to a certain form, or remitted to a certain place.

Illustration.

A bequeaths to B 10,000 rupees, and directs that this legacy shall be paid as soon as A's property in India shall be realized in England. The legacy is not specific.

When enumerated articles not deemed specifically bequeathed.

133. Where a will contains a bequest of the residue of the testator's property along with an enumeration of some items of property not previously bequeathed, the articles enumerated shall not be deemed to be specially bequeathed.

Retention, in form, of specific bequest to several persons in succession.

134. Where property is specially bequeathed to two or more persons in succession, it shall be retained in the form in which the testator left it, although it may be of such a nature that its value is continually decreasing.

Sections 135-137.

Illustrations.

(*a*) A, having a lease of a house for a term of years, 15 of which were unexpired at the time of his death, has bequeathed the lease to B for his life, and after B's death to C. B is to enjoy the property as A left it, although, if B lives for 15 years, C can take nothing under the bequest.

(*b*) A, having an annuity during the life of B, bequeaths it to C for his life, and after C's death to D. C is to enjoy the annuity as A left it, although, if B dies before D, D can take nothing under the bequest.

Sale and investment of proceeds of property bequeathed to two or more persons in succession.

135. Where property comprised in a bequest to two or more persons in succession is not specifically bequeathed, it shall, in the absence of any direction to the contrary, be sold, and the proceeds of the sale shall be invested in such securities as the High Court may, by any general rule to be made from time to time, authorise or direct, and the fund thus constituted shall be enjoyed by the successive legatees according to the terms of the will.

Illustration.

A, having a lease for a term of years, bequeaths "all his property" to B for life, and after B's death to C. The lease must be sold, and the proceeds invested as stated in the text, and the annual income arising from the fund is to be paid to B for life. At B's death the capital of the fund is to be paid to C.

Where deficiency of assets to pay legacies, specific legacy not to abate with general legacies.

136. If there be a deficiency of assets to pay legacies, a specific legacy is not liable to abate with the general legacies.

PART XX.

OF DEMONSTRATIVE LEGACIES.

Demonstrative legacy defined.

137. Where a testator bequeaths a certain sum of money, or a certain quantity of any other commodity, and refers to a particular fund or stock so as to constitute the same the primary fund or stock out of which payment is to be made, the legacy is said to be demonstrative.

Explanation.—The distinction between a specific legacy and a demonstrative legacy consists in this, that

where specified property is given to the legatee, the legacy is specific;

where the legacy is directed to be paid out of specified property, it is demonstrative.

Illustrations.

(*a*) A bequeaths to B 1,000 rupees, being part of a debt due to him from W. He also bequeaths to C 1,000 rupees to be paid out of

Sections 138-139.

the debt due to him from W. The legacy to B is specific; the legacy to C is demonstrative."

(*b*) A bequeaths to B.

"10 bushels of the corn which shall grow in his field of green acre:"

"80 chests of the indigo which shall be made at his factory of Rampore:"

"10,000 rupees out of his five per cent promissory notes of the Government of India:"

an annuity of 500 rupees "from his funded property:"

"1,000 rupees out of the sum of 2,000 rupees due to him by C."

A bequeaths to B an annuity, and directs it to be paid out of the rents arising from his taluk of Ramnagar.

A bequeaths to B—

"10,000 rupees out of his estate at Ramnagar," or charges it on his estate at Ramnagar:

"10,000 rupees, being his share of the capital embarked in a certain business."

Each of these bequests is demonstrative.

Order of payment when legacy directed to be paid out of fund the subject of specific legacy.

138. Where a portion of a fund is specifically bequeathed and a legacy is directed to be paid out of the same fund, the portion specifically bequeathed shall first be paid to the legatee, and the demonstrative legacy shall be paid out of the residue of the fund, and, so far as the residue shall be deficient, out of the general assets of the testator.

Illustration.

A bequeaths to B 1,000 rupees being part of a debt due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. The debt due to A from W is only 1,500 rupees; of these 1,500 rupees, 1,000 rupees belong to B, and 500 rupees are to be paid to C. C is also to receive 500 rupees out of the general assets of the testator.

PART XXI.

OF ADEMPTION OF LEGACIES.

Ademption explained.

139. If anything which has been specifically bequeathed does not belong to the testator at the time of his death, or has been converted into property of a different kind, the legacy is a deemed: that is, it cannot take effect by reason of the subject-matter having been withdrawn from the operation of the will.

Illustrations.

(*a*) A bequeaths to B—

"the diamond ring presented to him by C:"

"his gold chain:,'

Sections 140-142.

"certain bale of wool:"
"a certain piece of cloth:"
"all his household goods which shall be in or about his dwelling-house in M Street in Calcutta, at the time of his death."

A, in his lifetime,—
sells or gives away the ring:
converts the chain into a cup:
converts the wool into cloth:
makes the cloth into a garment:
takes another house into which he removes all his goods.

Each of these legacies is adeemed.

(*b*) A bequeaths B—
"the sum of 1,000 rupees in a certain chest:"
"all the horses in his stable."

At the death of A, no money found in the chest, and no horses in the stable.

The legacies are adeemed.

(*c*) A bequeaths to B certain bales of goods. A takes the goods with him on a voyage. The ship and goods are lost at sea, and A is drowned. The legacy is adeemed.

Non-ademption of demonstrative legacy.

140. A demonstrative legacy is not adeemed by reason that the property on which it is charged by the will does not exist at the time of the death of the testator or has been converted into property of different kind; but it shall in such case be paid out of the general assets of the testator.

Ademption of specific bequest of right to receive something from a third party.

141. Where the thing specifically bequeathed is the right to receive something of value from a third party, and the testator himself receives it, the bequest is adeemed.

Illustrations.

(*a*) A bequeaths to B—
"the debt which C owes him:"
"2,000 rupees which he has in the hands of D:"
"the money due to him on the bond of E:"
"his mortgage on the Rampore factory."

All these debts are extinguished in A's lifetime, some with and some without his consent. All the legacies are adeemed.

(*b*) A bequeaths to B "his interest in certain policies of life assurance." A in his lifetime receives the amount of the policies. The legacy is adeemed.

Ademption *pro tanto* by testator's receipt of part of entire thing specifically bequeathed.

142. The receipt by the testator of a part of an entire thing specifically bequeathed shall operate as an ademption of the legacy to the extent of the sum so received.

Illustration.

A bequeaths to B "the debt due to him by C." The debt amounts to 10,000 rupees. C pays to A 5,000 rupees, the one-half of the debt. The legacy is revoked by ademption, so far as regards the 5,000 rupees received by A.

Sections 143-146.

Ademption *pro tanto* by testator's receipt of portion of entire fund of which portion has been specifically bequeathed.

143. If a portion of an entire fund or stock be specifically bequeathed, the receipt by the testator of a portion of the fund or stock shall operate as an ademption only to the extent of the amount so received; and the residue of the fund or stock shall be applicable to the discharge of the specific legacy.

Illustration.

A bequeaths to B one-half of the sum of 10,000 rupees due to him from W. A in his lifetime receives 6,000 rupees, part of the 10,000 rupees. The 4,000 rupees which are due from W to A at the time of his death belong to B under the specific bequest.

Order of payment where portion of fund specifically bequeathed to one legatee, and legacy charged on same fund to another, and testator having received portion of that fund remainder insufficient to pay both legacies.

144. Where a portion of a fund is specifically bequeathed to one legatee, and a legacy charged on the same fund is bequeathed to another legatee; if the testator receives a portion of that fund, and the remainder of the fund insufficient to pay both the specific and the demonstrative legacy, the specific legacy shall be paid first, and the residue (if any) of the fund shall be applied so far as it will extend in payment of the demonstrative legacy, and the rest of the demonstrative legacy shall be paid out of the general assets of the testator.

Illustration.

A bequeaths to B 1,000 rupees, part of the debt of 2,000 rupees due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. A afterwards receives 500 rupees, part of that debt, and dies leaving only 1,500 rupees due to him from W. Of these 1,500 rupees, 1,000 rupees belong to B and 500 rupees are to be paid to C. C is also to receive 500 rupees out of the general assets of the testator.

Ademption where stock specifically bequeathed does not exist at testator's death.

145. Where stock which has been specifically bequeathed does not exist at the testator's death, the legacy is adeemed.

Illustration.

A bequeaths to B—

"his capital stock of 1,000*l* in East India Stock:"

"his promissory notes of the Government of India for 10,000 rupees in their 4 per cent loan."

A sells the stock and the notes. The legacies are adeemed.

Ademption *pro tanto* where stock, specifically bequeathed, exists in part only at testator's death.

146. Where stock which has been specifically bequeathed does only in part exist at the testator's death, the legacy is adeemed so far as regards that part of the stock which has ceased to exist.

Illustration.

A bequeaths to B "his 10,000 rupees in the 5½ per cent loan of the Government of India." A sells one-half of his 10,000 rupees in the loan in question. One-half of the legacy is adeemed.

Sections 147-149.

Non-ademption of specific bequest of goods described as connected with certain place, by reason of removal.

147. A specific bequest of goods under a description connecting them with a certain place, is not adeemed by reason that they have been removed from such place from any temporary cause, or by fraud, or without the knowledge or sanction of the testator.

Illustrations.

A bequeaths to B "all his household goods which shall be in or about his dwelling-house in Calcutta at the time of his death." The goods are removed from the house to save them from fire. A dies before they are brought back.

A bequeaths to B "all his household goods which shall be in or about his dwelling-house in Calcutta at the time of his death." During A's absence upon a journey, the whole of the goods are removed from the house. A dies without having sanctioned their removal.

Neither of these legacies is adeemed.

When removal of thing bequeathed does not constitute ademption.

148. The removal of the thing bequeathed from the place in which it is stated in the will to be situated does not constitute an ademption where the place is only referred to in order to complete the description of what the testator meant to bequeath.

Illustrations.

A bequeaths to B all the bills, bonds and other securities for money belonging to him then lying in his lodgings in Calcutta. At the time of his death, these effects had been removed from his lodgings in Calcutta.

A bequeaths to B all his furniture then in his house in Calcutta. The testator has a house at Calcutta and another at Chinsurah, in which he lives alternately, being possessed of one set of furniture only, which he removes with himself to each house. At the time of his death the furniture is in the house at Chinsurah.

A bequeaths to B all his goods on board a certain ship then lying in the river Hugli. The goods are removed by A's directions to a warehouse, in which they remain at the time of A's death.

No one of these legacies is revoked by ademption.

When thing bequeathed is a valuable to be received by testator from third person; and testator himself, or his representative receives it.

149. Where the thing bequeathed is not the right to receive something of value from a third person, but the money or other commodity which shall be received from the third person by the testator himself or by his representatives, the receipt of such sum of money or other commodity by the testator shall not constitute an ademption; but if he mixes it up with the general mass of his property, the legacy is adeemed.

Illustration.

A bequeaths to B whatever sum may be received from his claim on C. A receives the whole of his claim on C, and sets it apart from the general mass of his property. The legacy is not adeemed.

Sections 150-154.

Change by operation of law of subject of specific bequest between date of will and testator's death.

150. Where a thing specifically bequeathed undergoes a change between the date of the will and the testator's death, and the change takes place by operation of law, or in the course of execution of the provision of any legal instrument under which the thing bequeathed was held, the legacy is not adeemed by reason of such change.

Illustrations.

A bequeaths to B "all the money which he has in the 5½ per cent loan of the Government of India." The securities for the 5½ per cent loan are converted during A's lifetime into 5 per cent stock.

A bequeaths to B the sum of 2,000*l* invested in Consols in the names of trustees for A. The sum of 2,000*l* is transferred by the trustees into A's own name.

A bequeaths to B the sum of 10,000 rupees in promissory notes of the Government of India which he has power, under his marriage settlement, to dispose of by will. Afterwards, in A's lifetime, the fund is converted into Consols by virtue of an authority contained in the settlement.

No one of these legacies has been adeemed.

Change of subject without testator's knowledge.

151. Where a thing specifically bequeathed undergoes a change between the date of the will and the testator's death, and the change takes place without the knowledge or sanction of the testator, the legacy is not adeemed.

Illustration.

A bequeaths to B "all his three per cent Consols." The Consols are, without A's knowledge, sold by his agent, and the proceeds converted into East India Stock. This legacy is not adeemed.

Stock specifically bequeathed, lent to third party on condition that it be replaced.

152. Where stock which has been specifically bequeathed is lent to a third party on condition that it shall be replaced, and it is replaced accordingly, the legacy is not adeemed.

Stock specifically bequeathed, sold but replaced and belonging to testator at his death.

153. Where stock specifically bequeathed is sold, and an equal quantity of the same stock is afterwards purchased and belongs to the testator at his death, the legacy is not adeemed.

PART XXII.

OF THE PAYMENT OF LIABILITIES IN RESPECT OF THE SUBJECT OF A BEQUEST.

Non-liability of executor to exonerate specific legatees.

154. Where property specifically bequeathed is subject at the death of the testator to any pledge, lien, or incumbrance, created by the testator himself or by any person

under whom he claims, then, unless a contrary intention appears by the will, the legatee, if he accepts the bequest, shall accept it subject to such pledge or incumbrance, and shall (as between himself and the testator's estate) be liable to make good the amount of such pledge or incumbrance.

A contrary intention shall not be inferred from any direction which the will may contain for the payment of the testator's debts generally.

Explanation.—A periodical payment in the nature of land revenue or in the nature of rent is not such an incumbrance as is contemplated by this section.

Illustrations.

(*a*) A bequeaths to B the diamond ring given him by C. At A's death the ring is held in pawn by D, to whom it has been pledged by A. It is the duty of A's executor's, if the state of the testator's assets will allow them, to allow B to redeem the ring.

(*b*) A bequeaths to B a zamindary, which at A's death is subject to a mortgage for 10,000 rupees, and the whole of the principal sum, together with interest to the amount of 1,000 rupees, is due at A's death. B, if he accepts the bequest, accepts it subject to this charge, and is liable, as between himself and A's estate, to pay the sum of 11,000 rupees thus due.

Completion of testator's title to things bequeathed to be at cost of his estate.

155. Where any thing is to be done to complete the testator's title to the thing bequeathed, it is to be done at the cost of the testator's estate.

Illustrations.

(*a*) A, having contracted in general terms for the purchase of a piece of land at a certain price, bequeaths it to B, and dies before he has paid the purchase-money. The purchase-money must be made good out of A's assets.

(*b*) A having contracted for the purchase of a piece of land for a certain sum of money, one-half of which is to be paid down, and the other half secured by mortgage of the land, bequeaths it to B, and dies before he has paid or secured any part of the purchase-money. One-half of the purchase-money must be paid out of A's assets.

Exoneration of legatee's immoveable property for which land revenue or rent payable periodically.

156. Where there is a bequest of any interest in immoveable property, in respect of which payment in the nature of land revenue or in the nature of rent has to be made periodically, the estate of the testator shall (as between such estate and the legatee) make good such payments or a proportion of them up to the day of his death.

Illustration.

A bequeaths to B a house, in respect of which 365 rupees are payable annually by way of rent. A pays his rent at the usual time, and dies 25 days after. A's estate shall make good 25 rupees in respect of the rent.

Sections 157-158.

Exoneration of specific legatee's stock in Joint Stock Company.

157. In the absence of any direction in the will, where there is a specific bequest of stock in a Joint Stock Company, if any call or other payment is due from the testator at the time of his death in respect of such stock, such call or payment shall, as between the testator's estate and the legatee be borne by such estate.

But if any call or other payment shall, after the testator's death, become due in respect of such stock, the same shall, as between the testator's estate and the legatee, be borne by the legatee if he accepts the bequest.

Illustrations.

(*a*) A bequeathed to B his shares in a certain railway. At A's death there was due from him the sum of 5*l* in respect of each share, being the amount of a call which had been duly made, and the sum of 5*s*. in respect of each share, being the amount of interest which had accrued due in respect of the call. These payments must be borne by A's estate.

(*b*) A has agreed to take 50 shares in an intended Joint Stock Company and has contracted to pay up 5*l* in respect of each share, which sum must be paid before his title to the shares can be completed. A bequeaths these shares to B. The estate of A must make good the payments which were necessary to complete A's title.

(*c*) A bequeaths to B his shares in a certain railway. B accepts the legacy. After A's death, a call is made in respect of the shares. B must pay the call.

(*d*) A bequeaths to B his shares in a Joint Stock Company. B accepts the bequest. Afterwards the affairs of the Company are wound up, and each shareholder is called upon for contribution. The amount of the contribution must be borne by the legatee.

(*e*) A is the owner of ten shares in a Railway Company. At a meeting held during his lifetime, a call is made of 3*l* per share, payable by three instalments. A bequeaths his shares to B, and dies between the day fixed for the payment of the first and the day fixed for the payment of the second instalment, and without having paid the first instalment. A's estate must pay the first instalment, and B, if he accepts the legacy, must pay the remaining instalments.

PART XXIII.

Of Bequests of Things described in general terms.

Bequest of thing described in general terms.

158. If there be a bequest of something described in general terms, the executor must purchase for the legatee what may reasonably be considered to answer the description.

Illustrations.

(*a*) A bequeaths to C *a* pair of carriage-horses, or *a* diamond ring. The executor must provide the legatee with such articles, if the state of the assets will allow it.

Sections 159-160.

(*b*) A bequeaths to B "*his* pair of carriage-horses." A had no carriage-horses at the time of his death. The legacy fails.

PART XXIV.

OF BEQUESTS OF THE INTEREST OR PRODUCE OF A FUND.

Bequest of interest or produce of fund.

159. Where the interest or produce of a fund is bequeathed to any person, and the will affords no indication of an intention that the enjoyment of the bequest should be of limited duration, the principal as well as the interest shall belong to the legatee.

Illustrations.

(*a*) A bequeaths to B the interest of his 5 per cent promissory notes of the Government of India. There is no other clause in the will affecting those securities. B is entitled to A's per cent promissory notes of the Government of India.

(*b*) A bequeaths the interest of his 5½ per cent promissory notes of the Government of India to B for his life, and after his death to C. B is entitled to the interest of the notes during his life and C is entitled to the notes upon B's death.

(*c*) A bequeaths to B the rents of his lands at X. B is entitled to the lands.

PART XXV.

OF BEQUESTS OF ANNUITIES.

Annuity created by will payable for life only unless contrary intention appears by will.

160. Where an annuity is created by will, the legatee is entitled to receive it for his life only, unless a contrary intention appears by the will. And this rule shall not be varied by the circumstance that the annuity is directed to be paid out of the property generally, or that a sum of money is bequeathed to be invested in the purchase of it.

Illustrations.

(*a*) A bequeaths to B 500 rupees a year. B is entitled during his life to receive the annual sum of 500 rupees.

(*b*) A bequeaths to B the sum of 500 rupees monthly. B is entitled during his life to receive the sum of 500 rupees every month.

(*c*) A bequeaths an annuity of 500 rupees to B for life, and on B's death to C. B is entitled to an annuity of 500 rupees during his life. C, if he survives B, is entitled to an annuity of 500 rupees from B's death until his own death.

Sections 161-165.

161. Where the will directs that an annuity shall be provided for any person out of the proceeds of property, or out of property generally, or where money is bequeathed to be invested in the purchase of an annuity for any person, on the testator's death, the legacy vests in interest in the legatee, and he is entitled at his option to have an annuity purchased for him, or to receive the money appropriated for that purpose by the will.

Period of vesting where will directs that annuity be provided out of proceeds of property, or out of property generally, or where money bequeathed to be invested in purchase of annuity.

Illustrations.

(*a*) A by his will directs that his executors shall, out of his property purchase an annuity of 1,000 rupees for B. B is entitled at his option to have an annuity of 1,000 rupees for his life purchased for him, or to receive such a sum as will be sufficient for the purchase of such an annuity.

(*b*) A bequeaths a fund to B for his life, and directs that after B's death it shall be laid out in the purchase of on annuity for C. B and C survive the testator. C dies in B's lifetime. On B's death the fund belongs to the representative of C.

162. Where an annuity is bequeathed, but the assets of the testator are not sufficient to pay all the legacies given by the will, the annuity shall abate in the same portion as the other pecuniary legacies given by the will.

Abatement of annuity.

163. Where there is a gift of an annuity and a residuary gift, the whole of the annuity is to be satisfied before any part of the residue is paid to the residuary legatee, and, if necessary, the capital of the testator's estate shall be applied for that purpose.

Where gift of annuity, and residuary gift, whole annuity to be first satisfied.

PART XXVI.

OF LEGACIES TO CREDITORS AND PORTIONERS.

164. Where a debtor bequeaths a legacy to his creditor, and it does not appear from the will that the legacy is meant as a satisfaction of tha debt, the creditor shall be entitled to the legacy as well as to the amount of the debt.

Creditor *prima facie* entitled to legacy as well as debt.

165. Where a parent, who is under obligation by contract to provide a portion for a child, fails to do so, and afterwards bequeaths a legacy to the child, and does not intimate by his will that the legacy is meant as a satisfaction of the portion, the child shall be entitled to receive the legacy as well as the portion.

Child *prima facie* entitled to legacy as well as portion.

Illustration.

A, by articles entered into in contemplation of his marriage with B, covenanted that he would pay to each of the daughters of the intended

marriage a portion of 20,000 rupees on her marriage. This covenant having been broken, A bequeaths 20,000 rupees to each of the married daughters of himself and B. The legatees are entitled to the benefit of this bequest in addition to their portions.

No ademption by subsequent provision for legatee,

166. No bequest shall be wholly or partially adeemed by a subsequent provision made by a settlement or otherwise for the legatee.

Illustrations.

(*a*) A bequeaths 20,000 rupees to his son B. He afterwards gives to B the sum of 20,000 rupees. The legacy is not thereby adeemed.

(*b*) A bequeaths 40,000 rupees to B, his orphan niece, whom he had brought up from her infancy. Afterwards, on the occasion of B's marriage, A settles upon her the sum of 30,000 rupees. The legacy is not thereby diminished.

PART XXVI.

OF ELECTION.

Circumstances in which election takes place.

167. Where a man, by his will, professes to dispose of something which he has no right to dispose of, the person to whom the thing belongs shall elect either to confirm such disposition or to dissent from it, and in the latter case he shall give up any benefits which may have been provided for him by the will.

Devolution of interest relinquished by owner.

168. The interest so relinquished shall devolve as if it had not been disposed of by the will in favour of the legatee, subject, nevertheless, to the charge of making good to the disappointed legatee the amount or value of the gift attempted to be given to him by the will.

Testator's belief as to his ownership immaterial.

169. This rule will apply whether the testator does or does not believe that which he professes to dispose of by his will to be his own.

Illustrations.

(*a*) The farm of Sultanpur was the property of C. A bequeathed it to B giving a legacy of 1,000 rupees to C. C has elected to retain his farm of Sultanpur, which is worth 800 rupees. C forfeits his legacy of 1,000 rupees, of which 800 rupees goes to B, and the remaining 200 rupees falls into the residuary bequest, or devolves according to the rules of intestate succession, as the case may be.

(*b*) A bequeaths an estate to B in case B's elder brother (who is married and has children) shall leave no issue living at his death. A also bequeaths to C a jewel, which belongs to B. B must elect to give up the jewel, or to lose the estate.

Sections 170-172.

(*c*) A bequeaths to B 1,000 rupees, and to C an estate which will under a settlement, belong to B if his elder brother (who is married and has children) shall leave no issue living at his death. B must elect to give up the estate, or to lose the legacy.

(*d*) A, a person of the age of 18 domiciled in British India, but owning real property in England, to which C is heir-at-law, bequeaths a legacy to C, and, subject thereto, devises and bequeaths to B "all his property, whatsoever and wheresoever," and dies under 21. The real property in England does not pass by the will. C may claim his legacy without giving up the real property in England.

Bequest for man's benefit how regarded for purpose of election.

170. A bequest for a man's benefit is, for the purpose of election, the same thing as a bequest made to himself.

Illustration.

The farm of Sultanpur Khurd being the property of B, A bequeathed it to C; and bequeathed another farm called Sultanpur Buzurg to his own executors with a direction that it should be sold, and the proceeds applied in payment of B's debts. B must elect whether he will abide by the will or keep his farm, of Sultanpur Khurd in opposition to it.

Person deriving benefit indirectly not put to election.

171. A person taking no benefit directly under the will but deriving a benefit under it indirectly, is not put to his election.

Illustration.

The lands of Sultanpur are settled upon C for life, and after his death upon D, his only child. A bequeaths the lands of Sultanpur to B, and 1,000 rupees to C. C dies intestate, shortly after the testator, and without having made any election. D takes out administration to C, and as administrator elects on behalf of C's estate to take under the will. In that capacity he receives the legacy of 1,000 rupees, and accounts to B for the rents of the lands of Sultanpur which accrued after the death of the testator and before the death of C. In his individual character he retains the lands of Sultanpur in opposition to the will.

Person taking in individual capacity, under will, may in other character elect to take in opposition.

172. A person who in his individual capacity takes a benefit under the will, may in another character elect to take in opposition to the will.

Illustration.

The estate of Sultanpur is settled upon A for life, and after his death upon B. A leaves the estate of Sultanpur to D, and 2,000 rupees to B, and 1,000 rupees to C, who is B's only child. B dies intestate, shortly after the testator, without having made an election. C takes out administration to B, and as administrator elects to keep the estate of Sultanpur in opposition to the will, and to relinquish the legacy of 2,000 rupees. C may do this, and yet claim his legacy of 1,000 rupees under the will.

Exception to the six last Rules.—Where a particular gift is expressed in the will to be in lieu of something

Sections 173-175.

belonging to the legatee, which is also in terms disposed of by the will, if the legatee claims that thing, he must relinquish the particular gift, but he is not bound to relinquish any other benefit given to him by the will.

Illustration.

Under A's marriage-settlement his wife is entitled, if she survives him, to the enjoyment of the estate of Sultanpur during her life. A by his will bequeaths to his wife an annuity of 200*l* during her life, in lieu of her interest in the estate of Sultanpur, which estate he bequeaths to his son. He also gives his wife a legacy of 1,000*l*. The widow elects to take what she is entitled to under the settlement. She is bound to relinquish the annuity, but not the legacy of 1,000*l*.

When acceptance of benefit given by will constitutes election to take under will.

173. Acceptance of a benefit given by the will constitutes an election by the legatee to take under the will, if he has knowledge of his right to elect, and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives inquiry into the circumstances.

Illustrations.

(*a*) A is owner of an estate called Sultanpur Khurd, and has life interest in another estate called Sultanpur Buzrug, to which, upon his death, his son B will be absolutely entitled. The will of A gives the estate of Sultanpur Khurd to B, and the estate of Sultanpur Buzurg to C. B, in ignorance of his own right to the estate of Sultanpur Buzurg, allows C to take possession of it, and enters into possession of the estate of Sultanpur Khurd. B has not confirmed the bequest of Sultanpur Buzurg to C.

(*b*) B, the eldest son of A, is the possessor of an estate called Sultanpur. A bequeaths Sultanpur to C, and to B the residue of A's property. B, having been informed by A's executors that the residue will amount to 5,000 rupees, allows C to take possession of Sultanpur. He afterwards discovers that the residue does not amount to more than 500 rupees. B has not confirmed the bequest of the estate of Sultanpur to C.

Presumption arising from enjoyment by legatee for two years.

174. Such knowledge or waiver of inquiry shall, in the absence of evidence to the contrary, be presumed if the legatee has enjoyed for two years the benefits provided for him by the will without doing any act to express dissent.

Confirmation of bequest by act of legatee.

175. Such knowledge or waiver of inquiry may be inferred from any act of the legatee which renders it impossible to place the persons interested in the subject-matter of the bequest in the same condition as if such act had not been done.

Sections 176-178.

Illustration.

A bequeaths to B an estate to which C is entitled, and to C a coal-mine. C takes possession of the mine, and exhausts it. He has thereby confirmed the bequest of the estate to B.

When testator's representatives may call upon legatee to elect.

176. If the legatee shall not, within one year after the death of the testator, signify to the testator's representatives his intention to confirm or to dissent from the will, the representatives shall, upon the expiration of that period, require him to make his election.

Effect of non-compliance.

And if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the will.

Postponement of election in case of disability.

177. In case of disability the election shall be postponed until the disability ceases, or until the election shall be made by some competent authority.

PART XXVIII.

Of Gifts in Contemplation of Death.

Property transferable by gift made in contemplation of death.

178. A man may dispose, by gift made in contemplation of death, of any moveable property which he could dispose of by will.

When gift said to be made in contemplation of death.

A gift is said to be made in contemplation of death where a man who is ill and expects to die shortly of his illness, delivers to another the possession of any moveable property to keep as a gift in case the donor shall die of that illness.

Such gift resumable.

Such a gift may be resumed by the giver.

When it fails.

It does not take effect if he recovers from the illness during which it was made; nor if he survives the person to whom it was made.

Illustrations.

(*a*) A being ill, and in expectation of death, delivers to B, to be retained by him in case of A's death—

a watch:
a bond granted by C to A:
a Bank Note:
a promissory note of the Government of India endorsed in blank:
a bill of exchange endorsed in blank:
certain mortgage-deeds.

A dies of the illness during which he delivered these articles.

B is entitled to—

the watch:
the debt secured by C's bond:
the bank-note:
the promissory note of the Government of India:
the bill of exchange:
the money secured by the mortgage-deeds.

Sections 179-183.

(*b*) A, being ill and in expectation of death, delivers to B the key of a trunk, or the key of a warehouse in which goods of bulk belonging to A are deposited, with the intention of giving him the control over the contents of the trunk, or over the deposited goods, and desires him to keep them in case of A's death. A dies of the illness during which he delivered these articles. B is entitled to the trunk and its contents or to A's goods of bulk in the warehouse.

(*c*) A, being ill and in expectation of death, put aside certain articles in separate parcels, and marks upon the parcels respectively the names of B and C. The parcels are not delivered during the life of A. A dies of the illness during which he set aside the parcels. B and C are not entitled to the contents of the parcels.

PART XXIX.

OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

Character and property of executor or administrator as such.

179. The executor or administrator, as the case may be, of a deceased person, is his legal representative for all purposes, and all the property of the deceased person vests in him as such.

Administration with copy annexed of authenticated copy of will proved abroad.

180. When a will has been proved and deposited in a Court of competent jurisdiction, situated beyond the limits of the Province, whether in the British dominions or in a foreign country, and a properly authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed.

Probate only to appointed executor.

181. Probate can be granted only to an executor appointed by the will.

Appointment express or implied.

182. The appointment may be express or by necessary implication.

Illustrations.

(*a*) A wills that C be his executor if B will not; B is appointed executor by implication.

(*b*) A gives a legacy to B and several legacies to other persons, among the rest to his daughter-in-law, C, and adds, "but should the within named C be not living, I do constitute and appoint B my whole and executrix." C is appointed executrix by implication.

(*c*) A appoints several persons executors of his will and codicils, and his nephew residuary legatee, and in another codicil are these words:—"I appoint my nephew my residuary legatee to discharge all lawful demands against my will and codicils, signed of different dates." The nephew is appointed an executor by implication.

Persons to whom probate cannot be granted.

183. Probate cannot be granted to any person who is a minor or is of unsound mind, nor to a married woman without the previous consent of her husband.

Sections 184-192.

184. When several executors are appointed, probate may be granted to them all simultaneously or at different times. Grant of probate to several executors simultaneously at different times.

Illustration.

A is an executor of B's will by express appointment, and C an executor of it by implication. Probate may be granted to A and C at the same time, or to A first and then to C, or to C first and then to A.

185. If a codicil be discovered after the grant of probate, a separate probate of that codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the will. Separate probate of codicil discovered after grant of probate.

If different executors are appointed by the codicil, the probate of the will must be revoked, and a new probate granted of the will and the codicil together. Procedure when different executors appointed by codicil.

186. When probate has been granted to several executors, and one of them dies, the entire representation of the testator accrues to the surviving executor or executors. Accrual of representation to surviving executor.

187. No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction within the Province shall have granted probate of the will under which the right is claimed, or shall have granted letters of administration under the one hundred and eightieth section. Right of executor or legatee when established.

188. Probate of a will when granted establishes the will from the death of the testator, and renders valid all intermediate acts of the executors as such. Effect of probate.

189. Letters of administration cannot be granted to any person who is a minor or is of unsound mind, nor to a married woman without the previous consent of her husband. To whom administration may not be granted.

190. No right to any part of the property of a person who has died intestate can be established in any Court of Justice, unless letters of administration have first been granted by a Court of competent jurisdiction. Right to intestate's property when established.

191. Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death. Effect of letters of administration.

192. Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate. Acts not validated by administration.

Sections 193-198.

Grant of administration where executor has not renounced.

193. When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued, calling upon the executor to accept or renounce his executorship;

Exception.

Except that when one or more of several executors have proved a will, the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.

Form and effect of renunciation of executorship.

194. The renunciation may be made orally in the presence of the Judge, or by a writing signed by the person renouncing, and when made shall preclude him from ever thereafter applying for probate of the will appointing him executor.

Procedure where executor renounces or fails to accept within time limited.

195. If the executor renounce, or fail to accept the executorship within the time limited for the acceptance or refusal thereof, the will may be proved and letters of administration with a copy of the will annexed may be granted to the person who would be entitled to administration in case of intestacy.

Grant of administration to universal or residency legatee.

196. When the deceased has made a will, but has not appointed an executor, or

when he has appointed an executor who is legally incapable or refuses to act, or has died before the testator, or before he has proved the will, or

when the executor dies after having proved the will but before he has administered all the estate of the deceased;

an universal or a residuary legatee may be admitted to prove the will, and letters of administration with the will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

Right to administration of representative of deceased residuary legatee.

197. When a residuary legatee who has a beneficial interest survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration with the will annexed as such residuary legatee.

Grant of administration where no executor, nor residuary legatee, nor representative of such legatee.

198. When there is no executor and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate,

Sections 199-205.

or any other legatee having a beneficial interest or a creditor, may be admitted to prove the will, and letters of administration may be granted to him or them accordingly.

Citation before grant of administration to legatee other than universal or residuary.

199. Letters of administration with the will annexed shall not be granted to any legatee other than an universal or a residuary legatee, until a citation has been issued and published in the manner hereinafter mentioned, calling on the next of kin to accept or refuse letters of administration.

Order in which connections entitled to administer.

200. When the deceased has died intestate, those who are connected with him, either by marriage or by consanguinity, are entitled to obtain letters of administration of his estate and effects in the order and according to the rules hereinafter stated.

Administration to widow unless court see cause to exclude her.

201. If the deceased has left a widow, administration shall be granted to the widow, unless the court shall see cause to exclude her, either on the ground of some personal disqualification, or because she has no interest in the estate of the deceased.

Illustrations.

(*a*) The widow is a lunatic, or has committed a adultery, or has been barred by her marriage settlement of all interest in her husband's estate; there is cause for excluding her from the administration.

(*b*) The widow has married again since the decease of her husband; this is not good cause for her exclusion.

Association with widow in administration.

202. If the Judge think proper, he may associate any person or persons with the widow in the administration, who would be entitled solely to the administration if there were no widow.

Administration where no widow or widow excluded.

203. If there be no widow, or if the Court see cause to exclude the widow, it shall commit the administration to the person or persons who would be beneficially entitled to the estate according to the rules for the distribution of an intestate's estate:

Proviso.

Provided that, when the mother of the deceased shall be one of the class of persons so entitled, she shall be solely entitled to administration.

Title of kindred to administration.

204. Those who stand in equal degree of kindred to the deceased are equally entitled to administration.

Right of widower to administration of wife's estate.

205. The husband, surviving his wife, has the same right of administration of her estate as the widow has in respect of the estate of her husband.

Sections 206-212.

Grant of administration to creditor.

206. When there is no person connected with the deceased by marriage or consanguinity who is entitled to letters of administration and willing to act, they may be granted to a creditor.

Administration where property left in British India.

207. Where the deceased has left property in British India, letters of administration must be granted according to the foregoing rules, although he may have been a domiciled inhabitant of a country in which the law relating to testate and intestate succession differs from the law of British India.

PART XXX.

OF LIMITED GRANT.

(a) Grants limited in Duration.

Probate of copy or draft of lost will.

208. When the will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident and not by any act of the testator, and a copy or the draft of the will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it be produced.

Probate of contents of lost or destroyed will.

209. When the will has been lost or destroyed and no copy has been made nor the draft preserved, probate may be granted of its contents, if they can be established by evidence.

Probate of copy where original exists.

210. When the will is in the possession of a person residing out of the Province in which application for probate is made, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original, probate may be granted of the copy so transmitted, limited until the will or an authenticated copy of it be produced.

Administration until will produced.

211. Where no will of the deceased is forthcoming, but there is reason to believe that there is a will in existence, letters of administration may be granted, limited until the will or an authenticated copy of it be produced.

(b) Grants for the use and benefit of others having Right.

Administration, with will annexed to attorney of absent executor.

212. When any executor is absent from the Province in which application is made, and there is no executor within the Province willing to act, letters of administration, with the will annexed, may be granted to the attorney of the

absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.

Administration, with will annexed to attorney of absent person, who, if present, would be entitled to administer.

213. When any person to whom, if present, letters of administration, with the will annexed, might be granted, is absent from the Province, letters of administration, with the will annexed, may be granted to his attorney, limited as above mentioned.

Administration to attorney of absent person entitled to administer in case of intestacy.

214. When a person entitled to administration in case of intestacy is absent from the Province, and no person equally entitled is willing to act, letters of administration may be granted to the attorney of the absent person, limited as before mentioned.

Administration during minority of sole executor or residuary legatee.

215. When a minor is sole executor or sole residuary legatee, letters of administration, with the will annexed, may be granted to the legal guardian of such minor or to such other person as the Court shall think fit until the minor shall have completed the age of eighteen years, at which period and not before, probate of the will shall be granted to him.

Administration during minority of several executors or residuary legatees.

216. When there are two or more minor executors and no executor who has attained majority, or two or more residuary legatees and no residuary legatee who has attained majority, the grant shall be limited until one of them shall have completed the age of eighteen years.

Administration for use and benefit of lunatic *jus habens*.

217. If a sole executor or a sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate according to the rule [a] for the distribution of intestates' estates, be a lunatic, letters of administration, with or without the will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or, if there be no such person, to such other person as the Court may think fit to appoint, for the use and benefit of the lunatic until he shall become of sound mind.

Administration *pendente lite*.

218. Pending any suit touching the validity of the will of a deceased person, or for obtaining or revoking any probate or any grant of letters of administration, the Court may

[a] *Sic*: *read* rules.

appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing such estate, and every such administrator shall be subject to the immediate control of the Court and shall act under its direction.

(c) For Special Purposes.

Probate limited to purpose specified in will.

219. If an executor be appointed for any limited purpose specified in the will, the probate shall be limited to that purpose, and, if he should appoint an attorney to take administration on his behalf, the letters of administration, with the will annexed, shall accordingly be limited.

Administration with will annexed, limited to particular purpose.

220. If an executor appointed generally give an authority to an attorney to prove a will on his behalf, and the authority is limited to a particular purpose, the letters of administration with the will annexed shall be limited accordingly.

Administration limited to property in which person has beneficial interest.

221. Where a person dies, leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the person beneficially interested in the property, or to some other person on his behalf.

Administration limited to suit.

222. When it is necessary that the representative of a person deceased be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other cause or suit which may be commenced in the same or in any other Court between the parties, or any other parties, touching the matters at issue in the said cause or suit, and until a final decree shall be made therein and carried into complete execution.

Administration limited to purpose of becoming party to suit to be brought against administrator.

223. If, at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator to whom the same has been granted is absent from the Province within which the Court that has granted the probate or letters of administration is situate, it shall be lawful for such Court to grant, to any person whom

it may think fit, letters of administration limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made therein into effect.

Administration limited to collection and preservation of deceased's property.

224. In any case in which it may appear necessary for preserving the property of a deceased person, the Court, within whose district any of the property is situate, may grant to any person whom such Court may think fit, letters of administration limited to the collection and preservation of the property of the deceased, and giving discharges for debts due to his estate, subject to the directions of the Court.

Appointment as administrator, of person other than one who under ordinary circumstances, would be entitled to administration.

225. When a person has died intestate, or leaving a will of which there is no executor willing and competent to act, or where the executor shall, at the time of the death of such person, be resident out of the Province, and it shall appear to the Court to be necessary or convenient to appoint some person to administer the estate or any part thereof, other than the person who under ordinary circumstances would be entitled to a grant of administration, it shall be lawful for the Judge, in his discretion, having regard to consanguinity, amount of interest, the safety of the estate and probability that it will be properly administrated, to appoint such person as he shall think fit to be administrator.

In every such case letters of administration may be limited or not as the Judge shall think fit.

(*d*) *Grants with Exception.*

Probate or administration with will annexed, subject to exception.

226. Whenever the nature of the case requires an exception be made, probate of a will, or letters of administration with the will annexed, shall be granted subject to such exception.

Administration with exception.

227. Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to such exception.

(*e*) *Grants of the Rest.*

Probate or administration of rest.

228. Whenever a grant, with exception, of probate or letters of administration, with or without the will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

Sections 229-234.

(f) Grants of Effects unadministered.

Grant of effects unadministered.

229. If the executor to whom probate has been granted have died, leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.

Rules as to grants of effects unadministered.

230. In granting letters of administration of an estate not fully administered, the Court shall be guided by the same rules as apply to original grants, and shall grant letters of administration to those persons only to whom original grants might have been made.

Administration when limited grant expired, and still some part of estate unadministered.

231. When a limited grant has expired by effluxion of time or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.

(g) Alteration in Grants.

What errors may be rectified by Court.

232. Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the Court, and the grant of probate or letters of administration may be altered and amended accordingly.

Procedure where codicil discovered after grant of administration with will annexed.

233. If, after the grant of letters of administration with the will annexed, a codicil be discovered, it may be added to the grant on due proof and identification, and the grant altered and amended accordingly.

(h) Revocation of Grants.

Revocation or annulment for just cause "Just cause."

234. The grant of probate or letters of administration may be revoked or annulled for just cause.

Explanation.—Just cause is—

1st, that the proceedings to obtain the grant were defective in substance;

2nd, that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the cause;

3rd, that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently;

4th, that the grant has become useless and inoperative through circumstances.

Sections 235-237.

Illustrations.

(*a*) The Court by which the grant was made had no jurisdiction.

(*b*) The grant was made without citing parties who ought to have been cited.

(*c*) The will of which probate was obtained was forged or revoked.

(*d*) A obtained letters of administration to the estate of B, as his widow, but has since transpired that she was never married to him.

(*e*) A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.

(*f*) Since probate was granted, a later will has been discovered.

(*g*) Since probate was granted, a codicil has been discovered, which revokes or adds to the appointment of executors under the will.

(*h*) The person to whom probate was, or letters of administration were, granted has subsequently become of unsound mind.

PART XXXI.

OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION.

Jurisdiction of District Judge in granting and revoking probates, etc.

235. The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his District.

District Judge's powers as to grant of probate and administration.

236. The District Judge shall have the like powers and authority in relation to the granting of probate and letters of administration, and all matters connected therewith as are by law vested in him in relation to any civil suit or proceeding depending in his Court.

District Judge may order person to produce testamentary papers.

237. The District Judge may order any person to produce and bring into Court any paper or writing, being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person;

and if it be not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the Court may direct such person to attend for the purpose of being examined respecting the same,

and such person shall be bound to answer such questions as may be put to him by the Court, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under the Indian Penal Code, in case of default in not attending or in

not answering such questions or not bringing in such paper or writing, as he would have been subject to in case he had been a party to a suit, and had made such default; and the costs of the proceeding shall be in the discretion of the Judge.

Proceedings of District Judge's Court in relation to probate and administration.

238. The proceedings of the Court of the District Judge in relation to the granting of probate and letters of administration shall, except as hereinafter otherwise provided, be regulated, so far as the circumstances of the case will admit, by the Code of Civil Procedure.

When and how District Judge to interfere for protection of property.

239. Until probate be granted of the will of a deceased person, or an administrator of his estate be constituted, the District Judge within whose jurisdiction any part of the property of the deceased person is situate is authorized and required to interfere for the protection of such property, at the instance of any person claiming to be interested therein, and in all other cases where the Judge considers that the property incurs any risk of loss or damage; and for that purpose, if he shall see fit, to appoint an officer to take and keep possession of the property.

When probate or administration may be granted by District Judge.

240. Probate of the will or letters of administration to the estate of a deceased person may be granted by the District Judge under the seal of his Court, if it shall appear by a petition verified as hereinafter mentioned, of the person applying for the same, that the testator or intestate, as the case may be, at the time of his decease had a fixed place of abode, or any property, movable or immovable, within the jurisdiction of the judge.

Disposal of application made to Judge of District in which deceased had no fixed abode.

241. When the application is made to the Judge of a District in which the deceased had no fixed abode at the time of his death, it shall be in the discretion of the Judge to refuse the application, if in his judgment it could be disposed of more justly or conveniently in another district, or, where the application is for letters of administration, to grant them absolutely, or limited to the property within his own jurisdiction.

Conclusiveness of probate or letters of administration.

242. Probate or letters of administration shall have effect over all the property and estate, movable or immovable of the deceased, throughout the Province in which the same is [a] granted,

[a] *Sic* should be "is or are."

Sections 243-245.

and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him,

and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property to the person to whom such probate or letters of administration shall have been granted.

Conclusiveness of application for probate or administration, if properly made and verified.

243. The application for probate or letters of administration, if made and verified in the manner hereinafter mentioned, shall be conclusive for the purpose of authorising the grant of probate or administration ;

and no such grant shall be impeached by reason that the testator or intestate had no fixed place of abode, or no property within the district at the time of his death, unless by a proceeding to revoke the grant if obtained by a fraud upon the court.

Petition for probate.

244. Application for the probate shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made, with the will annexed, and stating (1) the time of the testator's death, (2) that the writing annexed is his last will and testament, (3) that it was duly executed, and (4) that the petitioner is the executor therein named;

and in addition to these particulars, when the application is to the District Judge, the petition shall further state that the deceased at the time of his death had his fixed place of abode, or had some property, movable or immovable, situate within the jurisdiction of the Judge.

In what cases translation of will to be annexed to petition.

245. In cases wherein the will is written in any language other than English or than that in ordinary use in proceedings before the Court, there shall be a translation thereof annexed to the petition by a translator of the Court, if the language be one for which a translator is appointed; or, if the will be in any other language, then by any person competent to translate the same, in which case such translation shall be verified by that person in the following manner :—

Verification of translation by person other than Court translator.

"I (*A.B.*) do declare that I read and perfectly understand the language and character of the original, and that the above is a true and accurate translation thereof."

Sections 246-250.

Petition for letters of administration.

246. Applications for letters of administration shall be made by petition distinctly written as aforesaid, and stating (1) the time and place of the decreased's death, (2) the family or other relatives of the deceased, and their respective residences, (3) the right in which the petitioner claims, (4) that the deceased left some property within the jurisdiction of the District Judge to whom the application is made, and (5) the amount of assets which are likely to come to the petitioner's hands.

Petition for probate or administration to be signed and verified.

247. The petition for probate or letters of administration shall in all cases be subscribed by the petitioner and his pleader, if any, and shall be verified by the petitioner in the following manner or to the like effect :—

"I (*A.B.*), the petitioner in the above petition, declare that what is stated therein is true to the best of my information and belief."

Verification of petition for probate, by one witness to will.

248. Where the application is for probate, the petition shall also be verified by at least one of the witnesses to the will (when procurable), in the manner or to the effect following :—

"I (*C.D.*), one of the witnesses to the last will and testament of the testator mentioned in the above petition, declare that I was present and saw the said testator affix his signature (*or* mark) thereto (*as the case may be*), (*or* that the said testator acknowledged the writing annexed to the above petition to be his last will and testament in my presence.)"

Punishment for false averment in petition or declaration.

249. If any petition or declaration which is hereby required to be verified shall contain any averment which the person making the verification knows or believes to be false, such person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

District Judge may examine petitioner in person to

250. In all cases it shall be lawful for the District Judge, if he shall think proper,

to examine the petitioner in person, upon oath or solemn affirmation, and also

require further evidence.

to require further evidence of the due execution of the will, or the right of the petitioner to the letters of administration, as the case may be, and

to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration. Issue of citations to inspect proceedings.

The citation shall be fixed up in some conspicuous part of the Court-house, and also in the office of the Collector of the district, and otherwise published or made known in such manner as the Judge issuing the same may direct. Publication of citation.

251. Caveats against the grant of probate or administration may be lodged with the District Judge; and immediately on a caveat being entered with the District Judge, a copy thereof shall be given to any other Judge to whom it may appear to the District Judge expedient to transmit the same. Caveats against grant of probate or administration.

252. The caveat shall be to the following effect :— "Let nothing be done in the matter of the estate of *A. B.*, late of deceased, who died on the day of at , without notice to *C. D.* of ." Form of caveat.

253. No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge to whom the application has been made, until after such notice to the person by whom the same has been entered as the Court shall think reasonable. After entry of caveat, no proceeding taken on petition until after notice to caveator.

254. When it shall appear to the Judge that probate of a will should be granted, he will grant the same under the seal of his Court in manner following :— Grant of probate to be under seal of Court.

"I, , Judge of the District of , hereby made known that on the day of in the year the last will of , late of , a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his will, was granted to , the executor in the said will named, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same at or before the expiration of a year next ensuing, and also to render a true account thereof." Form of such grant.

255. And wherever it shall appear to the District Judge that letters of administration to the estate of a person deceased, with or without a copy of the will annexed, should be granted, he will grant the same under the seal of his Court in manner following :— Grant of letters of administration to be under seal of Court.

Sections 256-259.

Form of such grant.

"I, , Judge of the District of hereby made known that on the day of letters of administration (with or without the will annexed, as the case may be) of the property and credits of , late of , deceased, were granted to , the father (*or* as the case may be) of the deceased, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same in this Court at or before the expiration of one year next ensuing, and also to render a true account thereof."

Administration bond.

256. [Every person to whom any grant of letters of administration other than a grant under section 212 is committed] shall give a bond to the Judge of the District Court to ensure for the benefit of the Judge for the time being, with one or more surety or sureties, engaging for the due collection, getting in and administering the estate of the deceased, which bond shall be in such form as the Judge shall from time to time by any general or special order direct.

Assignment of administration-bond.

257. The Court may, on application made by petition and on being satisfied that the engagement of any such bond has not been kept, and upon such terms as to security, or providing that the money received be paid into Court, or otherwise as the Court may think fit, assign the same to some person, his executors or administrators, who shall thereupon be entitled to sue on the said bond in his own name as if the same had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach thereof.

Time for grant of probate and administration.

258. No probate of a will shall be granted until after the expiration of seven clear days, and no letters of administration shall be granted until after the expiration of fourteen clear days, from the day of the testator or intestate's death.

Filing of original wills of which probate or administration with will annexed granted.

259. Every District Judge shall file and preserve all original wills, of which probate or letters of administration with the will annexed may be granted by him, among the records of his Court, until some public registry for wills is established;

and the Local Government shall make regulations for the preservation and inspection of the wills so filed as aforesaid.

[ ] Substituted by Act I of 1922.

Sections 260-265.

Grantee of probate or administration alone to sue, etc., until same revoked.

260. After any grant of probate or letters of administration, no other than the person to whom the same shall have been granted, shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, throughout the Province in which the same may have been granted, until such probate or letters of administration shall have been recalled or revoked.

Procedure in contentious cases.

261. In any case before the District Judge in which there is contention, the proceedings shall take, as nearly as may be, the form of a regular suit, according to the provisions of the Code of Civil Procedure, in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant.

Payment to executor or administrator before probate or administration revoked.

262. Where any probate is, or letters of administration are, revoked, all payments *bona fide* made to any executor or administrator under such probate or administration before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same;

Right of such executor or administrator to recoup himself.

and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself in respect of any payments made by him, which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

Appeals from orders of District Judge.

263. Every order made by a District Judge by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court under the rules contained in the Code of Civil Procedure applicable to appeals.

Concurrent Jurisdiction of High Court.

264. The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

PART XXXII.

Of Executors of their own Wrong.

Executor of his own wrong.

265. A person who intermeddles with the estate of the deceased, or does any other act which belongs to the office of executor, while there is no rightful executor or administrator in existence, thereby makes himself an executor of his own wrong.

Sections 266-268.

Exceptions.—First.—Intermeddling with the goods of the deceased for the purpose of preserving them, or providing for his funeral or for the immediate necessities of his family or property, does not make an executor of his own wrong.

Second.—Dealing in the ordinary course of business with goods of the deceased received from another does not make an executor of his own wrong.

Illustrations.

(*a*) A uses or gives away or sells some of the goods of the deceased, or takes them to satisfy his own debt or legacy, or receives payment of the debts of the deceased. He is an executor of his own wrong.

(*b*) A, having been appointed agent by the deceased in his lifetime to collect his debts and sell his goods, continues to do so after he has become aware of his death. He is an executor of his own wrong in respect of acts done after he has become aware of the death of the deceased.

(*c*) A sues as executor of the deceased, not being such. He is an executor of his own wrong.

Liability of executor of his own wrong.

266. When a person has so acted as to become an executor of his own wrong, he is answerable to the rightful executor or administrator, or to any creditor or legatee of the deceased, to the extent of the assets which may have come to his hands, after deducting payments made to the rightful executor or administrator, and payments made in a due course of administration.

PART XXXIII.

OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR.

In respect of causes of action surviving deceased, and rents due at death.

267. An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and to distrain for all rents due to him at the time of his death, as the deceased had when living.

Demands and rights of action of or against deceased survive to and against executor or administrator.

268. All demands whatsoever and all rights to prosecute or defend any action or special proceeding, existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action for defamation, assault as defined in the Indian Penal Code, or other personal injuries not causing the death of the party; and except also cases where, after the death of the party the relief sought could not be enjoyed, or granting it would be nugatory.

Sections 269-273.

Illustrations.

(*a*) A collision takes place on a railway in consequence of some neglect or default of the officials, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having brought any action. The cause of action does not survive.

(*b*) A sues for divorce. A dies. The cause of action does not survive to his representative.

Power of executor or administrator to dispose property.

269. An executor or administrator has power to dispose of the property of the deceased, either wholly or in part, in such manner as he may think fit.

Illustrations.

(*a*) The deceased has made a specific bequest of part of his property. The executor, not having assented to the bequest, sells the subject of it. The sale is valid.

(*b*) The executor, in the exercise of his discretion, mortgages a part of the immovable estate of the deceased. The mortgage is valid.

Purchase by executor or administrator of deceased's property.

270. If an executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.

Powers of several executors or administrators exercisable by one.

271. When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary, be exercised by any one of them who has proved the will or taken out administration.

Illustrations.

(*a*) One of the several executors has power to release a debt due to the deceased.

(*b*) One has power to surrender a lease.

(*c*) One has power to sell the property of the deceased, movable or immovable.

(*d*) One has power to assent a legacy.

(*e*) One has power to endorse a promissory note payable to the deceased.

(*f*) The will appoints A, B, C and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

Survival of powers on death of one of several executors or administrators.

272. Upon the death of one or more of several executors or administrators, all the powers of the office become vested in the survivors or suvivor.

Powers of administrator of effects unadministered.

273. The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator.

Sections 274-281.

Powers of administrator during minority.

274. An administrator during minority has all the powers of an ordinary administrator.

Powers of married executrix or administratrix.

275. When probate or letters of administration have been granted to a married woman, she has all the powers of an ordinary executor or administrator.

PART XXXIV.

OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR.

As to deceased's funeral.

276. It is the duty of the executor to perform the funeral of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose.

Inventory and account.

277. An executor or administrator shall, within six months from the grant of probate or letters of administration, exhibit in the Court by which the same may have been granted an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person or persons to which the executor or administrator is entitled in that character, and shall in like manner, within one year from the date aforesaid, exhibit an account of the estate, showing the assets that may have come to his hands, and the manner in which they have been applied or disposed of.

As to property of, and debts owing to, deceased.

278. The executor or administrator shall collect, with reasonable diligence, the property of the deceased and the debts that were due to him at the time of his death.

Expenses to be paid before all debts.

279. Funeral expenses to a reasonable amount according to the degree and quality of the deceased, and death-bed charges, including fees for medical attendance, and board and lodging for one month previous to his death, are to be paid before all debts.

Expenses to be paid next after such expenses.

280. The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, are to be paid next after the funeral expenses and death-bed charges.

Wages for certain services to be next paid, and then other debts.

281. Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artizan or domestic servant are next to be paid, and then the other debts of the deceased.

Sections 282-285.

282. Save as aforesaid, no creditor is to have a right of priority over another, by reason that his debt is secured by an instrument under seal, or on any other account.

But the executor or administrator shall pay all such debts as he knows of, including his own, equally and rateably, as far as the assets of the deceased will extend.

Save as aforesaid, all debts to be paid equally and rateably.

283. If the domicile of the deceased was not in British India, the application of his movable property to the payment of his debts is to be regulated by the law of the country in which he was domiciled.

Application of movable property to payment of debts, where domicile not in British India.

Illustration.

A dies, having his domicile in a country where instruments under seal have priority over instruments not under seal, leaving movable property to the value of 10,000 rupees, immovable property to the value of 5,000 rupees, debts on instruments under seal to the amount of 10,000 rupees and debts on instruments not under seal to the same amount. The debts on the instruments under seal are to be paid in full out of the movable estate, and the proceeds of the immovable estate are to be applied as far as they will extend towards the discharge of the debts not under seal. Accordingly, one-half of the amount of the debts not under seal, is to be paid out of the proceeds of the immovable estate.

284. No creditor who has received payment of a part of his debt by virtue of the last preceding section shall be entitled to share in the proceeds of the immovable estate of the deceased unless he brings such payment into account for the benefit of the other creditors.

Creditor paid in part under section 283 to bring payment into account before sharing in proceeds of immovable property.

Illustration.

A dies, having his domicile in a country where instruments under seal have priority over instruments not under seal, leaving movable property to the value of 5,000 rupees, and immovable property to the value of 10,000 rupees, debts on instruments under seal to the amount of 10,000 rupees, and debts on instruments not under seal to the same amount. The creditors holding instruments under seal receive half of their debts out of the proceeds of the movable estate. The proceeds of the immovable estate are to be applied in payment of the debts on instruments not under seal until one half of such debts has been discharged. This will leave 5,000 rupees, which are to be distributed rateably amongst all the creditors without distinction in proportion to the amount which may remain due to them.

285. Debts of every description must be paid before any legacy.

Debts to be paid before legacies.

Sections 286-291.

Executor or administrator not bound to pay legacies without indemnity.

286. If the estate of the deceased is subject to any contingent liabilities an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

Abatement of general legacies.

287. If the assets, after payment of debts, necessary expenses and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions,

Executor not to pay one legatee in preference to another.

and the executor has no right to pay one legatee in preference to another, nor to retain any money on account of a legacy to himself or to any person for whom he is a trustee.

Non-abatement of specific legacy when assets sufficient to pay debts.

288. Where there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

Right under demonstrative legacy, when assets sufficient to pay debts and necessary expenses.

289. Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted, and if, after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder.

Rateable abatement of specific legacies.

290. If the assets are not sufficient to answer the debts and the specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts.

Illustration.

A has bequeathed to B a diamond ring, valued at 500 rupees, and to C a horse, valued at 1,000 rupees. It is found necessary to sell all the effects of the testator, and his assets, after payment of debts, are only 1,000 rupees. Of this sum rupees 333-5-4 are to be paid to B, and rupees 666-10-8 to C

Legacies treated as general for purpose of abatement.

291. For the purpose of abatement, a legacy for life, a sum appropriated by the will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies.

Sections 292-294.

PART XXXV.

OF THE EXECUTOR'S ASSENT TO A LEGACY.

Assent necessary to complete legatee's title.

292. The assent of the executor is necessary to complete a legatee's title to his legacy.

Illustrations.

(*a*) A by his will bequeaths to B his Government paper, which is in deposit with the Bank of Bengal. The Bank has no authority to deliver the securities, nor B a right to take possession of them, without the assent of the executor.

(*b*) A by his will has bequeathed to C his house in Calcutta in the tenancy of B. C is not entitled to receive the rents without the assent of the executor.

Effect of executor's assent to specific legacy.

293. The assent of the executor to a specific bequest shall be sufficient to divest his interest as executor therein, and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way.

Nature of assent.

This assent may be verbal, and it may be either express or implied from the conduct of the executor.

Illustrations.

(*a*) A horse is bequeathed. The executor requests the legatee to dispose of it, or a third party proposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

(*b*) The interest of a fund is directed by the will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(*c*) A bequest is made of a fund to A, and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.

(*d*) Executors die after paying all the debts of the testator, but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(*e*) A person to whom a specific article has been bequeathed takes possession of it and retains it without any objection on the part of the executor. His assent may be presumed.

Conditional assent.

294. The assent of an executor to a legacy may be conditional, and if the condition be one which he has a right to enforce, and it is not performed, there is no assent.

Illustrations.

(*a*) A bequeaths to B his lands of Sultanpur, which at the date of the will, and at the death of A, were subject to a mortgage for 10,000

rupees. The executor assents to the bequest, on condition that B shall within a limited time pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(*b*) The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

Assent of executor to his own legacy.

295. When the executor is a legatee, his assent to his own legacy is necessary to complete his title to it, in the same way as it is required when the bequest is to another person, and his assent may in like manner be express or implied.

Implied assent.

Assent shall be implied if in his manner of administering the property he does any act which is referable to his character of legatee and is not referable to his character of executor.

Illustration.

An executor takes the rent of a house or the interest of Government securities bequeathed to him, and applies it to his own use. This is assent.

Effect of executor's assent.

296. The assent of the executor to a legacy gives effect to it from the death of the testator.

Illustrations.

(*a*) A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser, and completes his title to the legacy.

(*b*) A bequeaths 1,000 rupees to B with interest from his death. The executor does not assent to this legacy until the expiration of a year from A's death. B is entitled to interest from the death of A.

Executor when to deliver legacies.

297. An executor is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

Illustration.

A by his will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

PART XXXVI.

OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES.

Commencement of annuity when no time fixed by will.

298. Where an annuity is given by the will, and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.

Sections 299-304.

299. Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator's death; and shall, if the executor think fit, be paid when due, but the executor shall not be bound to pay till the end of the year.

When annuity, to be paid quarterly or monthly, first falls due.

300. When there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the will authorizes the first payment to be made;

Dates of successive payments when first payment directed to be made within given time, or on day certain.

and if the annuitant should die in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

Apportionment where annuitant dies between times of payment.

PART XXXVII.

OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES

301. Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall at the end of the year be invested in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

Investment of sum bequeathed where legacy not specific given for life.

302. Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in securities of the kind mentioned in the last preceding section.

Investment of general legacy, to be paid at future time.

The intermediate interest shall form part of the residue of the testator's estate.

Intermediate interest.

303. Where an annuity is given and no fund is charged with its payment or appropriated by the will to answer it, a Government annuity of the specified amount shall be purchased, or,

Procedure when no fund charged with, or appropriated to, annuity.

if no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct.

304. Where a bequest is contingent, the executor is not bound to invest the amount of the legacy, but may

Transfer to residuary legatee of contingent bequest.

transfer the whole residue of the estate to the residuary legatee on his giving sufficient security for the payment of the legacy if it shall become due.

Investment of residue bequeathed for life, without direction to invest in particular securities.

305. Where the testator has bequeathed the residue of his estate to a person for life without any direction to invest it in any particular securities, so much thereof as is not at the time of the testator's decease invested in such securities as the High Court may for the time being regard as good securities, shall be converted into money and invested in such securities.

Investment of residue bequeathed for life, with direction to invest in specified securities.

306. Where the testator has bequeathed the residue of his estate to a person for life with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his death invested in securities of the specified kind shall be converted into money and invested in such securities.

Time and manner of conversion and investment.

307. Such conversion and investment as are contemplated by the two last preceding sections shall be made at such times and in such manner as the executor shall in his discretion think fit;

Interest payable until investment.

and, until such conversion and investment shall be completed, the person who would be for the time being entitled to the income of the fund when so invested shall receive interest at the rate of four per cent per annum upon the market value (to be computed as of the date of the testator's death) of such part of the fund as shall not yet have been so invested.

Procedure where minor entitled to immediate payment or possession of bequest, and no direction to pay to person on his behalf.

308. Where, by the terms of a bequest, the legatee is entitled to the immediate payment of possession of the money or thing bequeathed, but is a minor, and there is no direction in the will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the Court of the District Judge, by whom the probate was or letters of administration with the will annexed were granted, to the account of the legatee, unless the legatee be a ward of the Court of Wards;

and if the legatee be a ward of the Court of Wards, the legacy shall be paid into that Court to his account;

and such payment into the Court of the District Judge, or into the Court of Wards, as the case may be, shall be a sufficient discharge for the money so paid;

Sections 309-310.

and such money when paid in shall be invested in the purchase of Government securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit, as the Judge or the Court of Wards, as the case may be, may direct.

PART XXXVIII.

OF THE PRODUCE AND INTEREST OF LEGACIES.

Legatee's title to produce of specific legacy.

309. The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

Exception.—A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy. The clear produce of it forms part of the residue of the testator's estate.

Illustrations.

(*a*) A bequeaths his flock of sheep to B. Between the death of A and delivery by his executor the sheep are shorn, or some of the ewes produce lambs. The wool and lambs are the property of B.

(*b*) A bequeaths his Government securities to B, but postpones the delivery of them till the death of C. The interest which falls due between the death of A and the death of C belongs to B, and must, unless he is a minor, be paid to him as it is received.

(*c*) The testator bequeaths all his four per cent Government promissory notes to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the notes, but the interest which accrues in respect of them, between the testator's death and A's completing 18, forms part of the residue.

Residuary legatee's title to produce of residuary fund.

310. The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

Exception.—A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy. Such income goes as undisposed of.

Illustrations.

(*a*) The testator bequeaths the residue of his property to A, a minor, to be paid to him when he shall complete the age of 18. The income from the testator's death belongs to A.

(*b*) The testator bequeaths the residue of his property to A when he shall complete the age of 18. A, if he completes that age, is entitled to receive the residue. The income which has accrued in respect of it since the testator's death goes as undisposed of.

Sections 311—317.

Interest when no time fixed for payment of general legacy.

311. Where no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of one year from the testator's death.

Exceptions.—(1) Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(2) Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

(3) Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

Interest when time fixed.

312. Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed. The interest up to such time forms part of the residue of the testator's estate.

Exception.—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the will for maintenance.

Rate of interest.

313. The rate of interest shall be four per cent per annum.

No interest on arrears of annuity within first year after testator's death.

314. No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the will for making the first payment of the annuity,

Interest on sum to be invested to produce annuity.

315. Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.

PART XXXIX.

OF THE REFUNDING OF LEGACIES.

Refund of legacy paid under Judge's orders.

316. When an executor has paid a legacy under the order of a Judge, he is entitled to call upon the legatee to refund, in the event of the assets proving insufficient to pay all the legacies.

No refund if paid voluntarily.

317. When an executor has voluntarily paid a legacy he cannot call upon a legatee to refund, in the event of the assets proving insufficient to pay all the legacies.

Sections 318—322.

Refund when legacy has become due on performance of condition within further time allowed under section 124.

318. When the time prescribed by the will for the performance of a condition has elapsed, without the condition having been performed, and the executor has thereupon, without fraud, distributed the assets; in such case, if further time has been allowed under the one hundred and twentyfourth section, for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount.

When each legatee is compellable to refund in proportion.

319. When the executor has paid away the assets in legacies, and he is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion.

Distribution of assets.

320. Where an executor or administrator has given such notices as would have been given by the High Court in an administration-suit, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets, or any part thereof, in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he shall not have had notice at the time of such distribution;

Creditor may follow assets.

but nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively.

Creditor may call upon legatee to refund.

321. A creditor who has not received payment of his debt may [a] call upon a legatee who has received payment of his legacy to refund, whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies; and whether the payment of the legacy by the executor was voluntary or not.

When legatee not satisfied or compelled to refund under section 321, cannot oblige one paid in full to refund.

322. If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy or who has been compelled to refund under the last preceding section, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

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[a] Certain words of S. 321, which were repealed by Act XV of 1877, have been omitted.

Sections 323—328.

When unsatisfied legatee must first proceed against executor, if solvent.

323. If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy must, before he can call on a satisfied legatee to refund, first proceed against the executor if he is solvent; but, if the executor is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

Limit to refunding of one legatee to another.

324. The refunding of one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been reduced if the estate had been properly administered.

Illustration.

A has bequeathed 240 rupees to B, 480 rupees to C, and 720 rupees to D. The assets are only 1,200 rupees, and if properly administered would give 200 rupees to B, 400 rupees to C, and 600 rupees to D. C and D have been paid their legacies in full, leaving nothing to B. B can oblige C to refund 80 rupees and D to refund 120 rupees.

Refunding to be without interest.

325. The refunding shall in all cases be without interest.

Residue after usual payments to be paid to residuary legatee.

326. The surplus or residue of the deceased's property after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the will.

PART XL.

OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION.

Liability of executor or administrator for devastation.

327. When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

Illustrations.

(*a*) The executor pays out of the estate an unfounded claim. He is liable to make good the loss.

(*b*) The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time. The executor is liable to make good the loss.

(*c*) The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

For neglect to get in any part of property.

328. When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount.

Sections 329–332.

Illustrations.

(*a*) The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount.

(*b*) The executor neglects to sue for a debt till the debtor is liable to plead the Act for the limitation of suits, and the debt is thereby lost to the estate. The executor is liable to make good the amount.

PART XLI.

MISCELLANEOUS.

329. [*Stamps and Fees.*] *Repealed by Act VII of* 1870.

330. [*Saving as to Administrator General.*] *Repealed by Act XXIV of* 1867.*

Succession to property of Hindus, etc., and certain wills, intestacies and marriages, not affected.

331. The provisions of this Act shall not apply to intestate or testamentary succession to the property of any Hindu, Muhammadan or Buddhist: nor shall they apply to any will made, or any intestacy occurring before the first day of January 1866.

The fourth section shall not apply to any marriage contracted before the same day.

Power of Governor-General in Council to exempt any race, sect or tribe in British India from operation of Act.

332. The Governor-General of India in Councilshall from time to time have power, by an order, either retrospectively from the passing of this Act or prospectively, to exempt from the operation of the whole or any part of this Act the members of any race, sect or tribe, in British India, or any part of such race, sect or tribe, to whom he may consider it impossible or inexpedient to apply the provisions of the Act, or of the part of the Act mentioned in the order.

The Governor-General of India in Council shall also have power from time to time to revoke such order, but not so that the revocation shall have any retrospective effect.

All orders and revocations made under this section shall be published in the *Gazette of India*.

SCHEDULE.

[*Stamps and Fees.*] *Repealed by Act VII of* 1870.

* Act XXIV of 1867 was passed in British India before the date of the extension of the present Act to Mysore.

Sections 1—8.

ACT V OF 1866.

Notification by the Government of India, Foreign Department, Judicial, No. 106, dated Fort William, the 15th April 1868.

His Excellency the Governor-General in Council is pleased to declare that the provisions of Act V of 1866 (being an Act to provide a summary procedure on Bills of Exchange and to amend in certain respects the commercial Law of British India), are applicable to the Mysore Territory.

2nd. Under Section 8 of the aforesaid Act, the provisions of Sections 2 to 7, both inclusive, of that Act shall be held to apply to the Court of the Deputy Superintendent of the Bangalore District.

(RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL ON THE 23RD FEBRUARY 1866.)

An Act [*a*] *to amend in certain respects the Commercial Law of British India.*

Preamble.

[*b*] Whereas inconvenience is felt by persons engaged in trade by reason of the laws of British India being in some particulars different from those of England in matters of common occurrence in the course of such trade; and whereas, with a view to remedy such inconvenience, it is expedient to amend the laws of British India as hereinafter mentioned; It is enacted as follows :—

Interpretation clause.

1. In this Act, unless there be something repugnant in the subject or context,—

"British India.",

"British India" shall mean the territories which are or may become vested in Her Majesty or Her successors by the Statutes 21 and 22 Vic., cap. 106 (*An Act for the better Government of India*).

[*Interpretation-clauses of "High Court" and "Local Government."*] *Repealed by Act of X of* 1877.

2. [*Form of plaint and summons in summary suits upon bills of exchange.*] *Repealed by Act X of* 1877.

3 *to* **7.** [*Procedure in such suits.*] *Repealed by Act X of* 1877.

8. [*Local Government may extend Act.*] *Repealed by Act X of* 1877.

(*a*)—(*b*) Certain words which were repealed by Act X of 1877 have been omitted.

Sections 9—15.

9. 10. [*Guarantees.*] *Repealed by Act IX of* 1872.

Acceptance of bills to be in writing and signed.

11. No acceptance of any Bill of Exchange, whether Inland or Foreign, made after the first day of May 1866, shall be sufficient to bind or charge any person, unless the same be in writing on such Bill, or, if there be more than one part of such Bill, on one of the said parts, and signed by the acceptor or some person duly authorized by him.

What deemed "inland bills."

12. Every Bill of Exchange or Promissory Note drawn or made in any part of British India, and made payable in or drawn upon any person resident in any part of British India, shall be deemed to be an Inland Bill, but nothing herein contained shall alter or affect the stamp duty, if any, which, but for this enactment, would be payable in respect of any such Bill or Note.

Protest by Notary Public to be *prima facie* evidence of dishonour.

13. Protest of a Bill of Exchange, whether Inland or Foreign, when purporting to be made by a Notary Public, shall be *prima facie* evidence that the Bill has been dishonoured.

14. [*Suits on lost negotiable instruments.*] *Repealed by Act X of* 1877.

Rights under marine and fire-policies to vest in assignees.

15. Every assignee, by endorsement or otherwise, of a policy of marine insurance or of a policy of insurance against fire, in whom the property in the subject insured shall be absolutely vested at the date of the assignment, shall have transferred to and vested in him all rights of suit as if the contract contained in the policy had been made with himself.

SCHEDULE.

[*Repealed by Act X of* 1877 *as amended by Act XII of* 1879.]

Sections 1—3.

ACT XXI OF 1866.

Notification by the Government of India, Foreign Department, Judicial No. 58 I.J., dated Fort William, the 14th February 1881.

The Viceroy and Governor-General in Council is pleased to extend Act XXI of 1866 (The Native Converts' Marriage Dissolution Act) to the Province of Mysore.

(RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL ON THE 2ND APRIL 1866.)

An Act to legalize, under certain circumstances, the dissolution of marriages of Native Converts to Christianity.

Preamble.

WHEREAS it is expedient to legalize, under certain circumstances, the dissolution of marriages of Native Converts to Christianity deserted or repudiated, on religious grounds, by their wives or husbands; It is enacted as follows:—

Short title.

1. This Act may be cited as "The Native Converts' Marriage Dissolution Act, 1866".

2. [*Commencement of Act.*] *Repealed by Act XVI of 1874.*

Interpretation clause.

3. In this Act:—

"Native husband".

"Native husband" shall mean a married man domiciled in British India, who shall have completed the age of sixteen years, and shall not be a Christian, a Muhammadan nor a Jew:

"Native wife."

"Native wife" shall mean a married woman domiciled in British India, who shall have completed the age of thirteen years, and shall not be a Christian, a Muhammadan nor a Jewess:

"Native law."

"Native law" shall mean any law, or custom having the force of law, of any persons domiciled in British India other than Christians, Muhammadans and Jews:

"Month and "year."

"Month" and "year" shall respectively mean month and year according to the British calendar:

"High Court."

"High Court" shall mean the highest Civil Court of appeal in any place to which this Act extends:

Number.

And unless there be something repugnant in the subject or context, words importing the singular number shall include the plural, and words importing the plural number shall include the singular.

Sections 4—11.

4. If a Native husband change his religion for Christianity, and if in consequence of such change his Native wife, for the space of six continuous months, desert or repudiate him, he may sue her for conjugal society. When convert deserted by his wife may sue for conjugal society.

5. If a Native wife change her religion for Christianity, and if in consequence of such change her Native husband, for the space of six continuous months, desert or repudiate her, she may sue him for conjugal society. When convert deserted by her husband may sue.

6. If the respondent, at the time of commencement of such suit, reside within the local limits of the ordinary original civil jurisdiction of any of the High Courts of Judicature, the suit shall be commenced in such Court: otherwise it shall be commenced in the principal Civil Court of original jurisdiction of the district in which the defendant shall reside at the commencement of the suit. Court in which suit shall be brought.

7. The suit shall be commenced by a petition in the form in the first schedule to this Act, or as near thereto as the circumstances of the case will allow. Suit to be commenced by verified petition.

The statements made in the petition shall be verified by the petitioner in the manner required by law for the verification of plaints; and the petition [a] may be amended by permission of the Court.

8. A copy of the petition shall be served upon the respondent, and the Court shall thereupon issue a citation under the seal of the Court and signed by the Judge. On service of petition, citation to respondent.

9. In ordinary cases the citation shall be in the form in the second schedule to this Act, or as near thereto as the circumstances of the case will allow. Form of citation.

But where the respondent is exempt by law from personal appearance in Court, or where the Judge shall so direct, the citation shall be in the form in the third schedule to this Act, or as near thereto as the circumstances of the case will allow.

10. A copy of the citation sealed with the seal of the Court shall be served on the respondent, and the provisions of the Code of Civil Procedure as the service and endorsement of summonses shall apply, *mutatis mutandis*, to citations under this Act. Service of citation.

11. If the respondent shall not obey such citation, and comply with every other requirement made upon her Penalty on respondent not obeying citation.

(a) Certain words regarding Court-fee, which were repealed by Act VII of 1870, have been omitted.

or him under the provisions of this Act, she or he shall be liable to punishment under section 174 of the Indian Penal Code.

Points to be proved on appearance of petitioner.

12. On the day fixed in the citation, the petitioner shall appear in Court, and the following points shall be proved—

(1) The identity of the parties:

(2) The marriage between the petitioner and the respondent:

(3) That the male party to the suit has completed the age of sixteen years, and that the female party to the suit has completed the age of thirteen years:

(4) The desertion or repudiation of the petitioner by the respondent:

(5) That such desertion of repudiation was in consequence of the petitioner's change of religion:

(6) And that such desertion or repudiation had continued for the six months immediately before the commencement of the suit.

First interrogation of respondent.

13. The respondent, if such points be proved to the satisfaction of the Judge, shall thereupon be asked whether she or he refuses to cohabit with the petitioner, and, if so, what is the ground of such refusal.

In ordinary cases such interrogation and every other interrogation prescribed by this Act shall be made by the Judge; but when the respondent is exempt by law from personal appearance in Court, or when the Judge shall, in his discretion, excuse the respondent from such appearance, the interrogations shall be made by commissioners acting under such commission as thereinafter mentioned.

Interrogations by Judge may be public or private.

14. Every interrogation mentioned in this Act and made by the Judge may, at the discretion of the Judge, take place in open Court or in his private room.

If any such interrogation take place in open Court, the Judge may, so long as it shall continue, exclude from the Court all such persons as he shall think fit to exclude.

Procedure when female respondent refuses to cohabit with petitioner.

15. If the respondent be a female, and in answer to the interrogatories of the Judge or commissioners, as the case may be, shall refuse to cohabit with the petitioner, the Judge, if upon consideration of the respondent's answers and of the facts which may have been proved by the petitioner he shall be of opinion that the ground for such refusal is the petitioner's change of religion, shall

Sections 16—18.

make an order adjourning the case for a year, and directing that, in the interim, the parties shall, at such place and time as he shall deem convenient have an interview of such length as the Judge shall direct, and in the presence of such person or persons (who may be a female or females) as the Judge shall select, with the view of ascertaining whether or not the respondent freely and voluntarily persists in such refusal.

Adjournment for a year.

Interview.

16. At the expiration of such adjournment, the petitioner shall again appear in Court and shall prove that the said desertion or repudiation had continued up to the time last hereinbefore referred to; and if the points mentioned in the twelfth and this section of this Act shall be proved to the satisfaction of the Judge, and if the respondent on being interrogated by the Judge or commissioners, as the case may be, again refuse to cohabit with the petitioner, the respondent shall be taken to have finally deserted or repudiated the petitioner; and the Judge shall, by a decree under his hand and sealed with the seal of his Court, declare that the marriage between the parties is dissolved.

Procedure on expiration of adjournment.

Interrogation of respondent.

Decree.

17. If the respondent be a male, and in answer to the interrogatories of the Judge or commissioners, as the case may be, shall refuse to cohabit with the petitioner, the Judge, if upon consideration of the respondent's answers and of the facts which may have been proved by the petitioner he shall be of opinion that the ground for such refusal is the petitioner's change of religion, shall adjourn the case for a year.

Decree in case of male respondent refusing to cohabit on the ground of petitioner's change of religion.

At the expiration of such adjournment, the petitioner shall again appear in Court; and if the respondent on being interrogated by the Judge or commissioners, as the case may be, again refuse to cohabit with the petitioner, the Judge shall thereupon pass such a decree as last aforesaid:

Provided that, if the petitioner shall so desire (but not otherwise), the proceedings in the suit shall, *mutatis mutandis*, be the same as in the case of a female respondent.

Proviso.

18. Notwithstanding anything hereinbefore contained, if it shall appear at any stage of the suit that both or either of the parties had not attained puberty at the date of their marriage, and that such marriage has not been consummated, and if, in answer to the interrogatories made pursuant to the thirteenth section of this Act, the respondent shall refuse to cohabit with the petitioner,

Decree if respondent so refuse in case of unconsummated marriage, either party being *impubes* at time of marriage.

and allege, as the ground for such refusal, that the petitioner has changed his or her religion, the Judge shall thereupon pass such a decree as last aforesaid.

Liberty to parties to marry again.

19. When any decree dissolving a marriage shall have been passed under the provisions of this Act, it shall be as lawful for the respective parties thereto to marry again as if the prior marriage had been dissolved by death, and the issue of any such remarriage shall be legitimate, any Native law to the contrary notwithstanding:

Provided always that no minister of religion shall be compelled to solemnize the marriage of any person whose former marriage may have been dissolved under this Act, or shall be liable to any suit or penalty for refusing to solemnize the marriage of any such person.

Judge to order commission to issue for examination of exempted persons.

20. In suits instituted under this Act, the Judge shall order a commission to issue to such persons, whether males or females or both, as he shall think fit, for the examination on interrogatories or otherwise of any persons so exempt as aforesaid.

The provisions of the Code of Civil Procedure shall, so far as practicable, apply to commissions issued under this section.

Proof of marriage and desertion or repudiation of petitioner in consequence of conversion.

21. At any stage of a suit instituted under this Act, cohabitation as man and wife shall be sufficient presumptive evidence of the marriage of the parties, and proof of the respondent's refusal or voluntary neglect to cohabit with the petitioner, after his or her change of religion and after knowledge thereof by the respondent shall be sufficient evidence of the respondent's desertion or repudiation of the petitioner, and shall also be sufficient evidence that such desertion or repudiation was in consequence of the petitioner's change of religion, unless some other sufficient cause for such desertion or repudiation be proved by the respondent.

Civil Procedure Code applied.

22. The provisions of the Code of Civil Procedure as to the summoning and examination of witnesses shall apply in suits instituted under this Act.

Dismissal of suit if either party under age required by Act, or if parties cohabiting, or respondent willing to cohabit.

23. If at any stage of the suit it be proved that the male party to the suit is or was at the institution thereof under the age of sixteen years, or that the female party to the suit is or was at the same time under the age of thirteen years, or that the petitioner and the respondent are cohabiting as man and wife, or if the Court is satisfied

Sections 24—28.

by the evidence adduced that the respondent is ready and willing so to cohabit with the petitioner, the Court shall pass a decree dismissing the suit and stating the ground of such dismissal.

Revival of suit after such dismissal.

24. If, at any time within twelve months after a decree dismissing the suit upon any of the ground mentioned in the last preceding section, the respondent again desert or repudiate the petitioner upon the ground of his or her change of religion, the suit may be revived by summoning the respondent; and upon proof of the former decree and of such renewed repudiation or desertion, the suit shall re-commence at the stage at which it had arrived immediately before the passing of such decree; and, after the proofs, interrogations, interview and adjournment which may then be requisite under the provisions hereinbefore contained, the Judge shall pass a decree of the nature mentioned in the sixteenth section of this Act.

Petitioner's cruelty or adultery to bar suit.

25. If at any stage of the suit it be proved that the respondent has deserted or repudiated the petitioner solely or partly in consequence of the petitioner's cruelty or adultery, the court shall pass a decree dismissing the suit and stating the ground of such dismissal.

A suit dismissed under this section shall not be revived.

Male petitioner's cohabitation with one of several wives to bar suit.

26. If the petitioner, being a male has at the time of the institution of the suit two or more wives, he shall make them all respondents; and if at any stage of the suit it be proved that he is cohabiting with one of such wives as man and wife, or that any one of such wives is ready and willing so to cohabit with him, the Court shall pass a decree dismissing the suit and stating the ground of such dismissal.

The provisions as to revival contained in the twenty-fourth section of this Act shall apply, *mutatis mutandis*, to a suit dismissed under this section.

Dissolution of marriage not to affect status or rights of children.

27. A dissolution of marriage under the provisions of this Act shall not operate to deprive the respondent's children (if any) by the petitioner of their status as legitimate children, or of any right or interest which they would have had, according to the Native law applicable to them by way of maintenance, inheritance or otherwise, in case the marriage had not been so dissolved as aforesaid.

Power to Court to award alimony.

28. If a suit be commenced under the provisions of this Act, and it appear to the Court that the wife has not sufficient separate property to enable her to maintain herself

suitably to her station in life and to prosecute or defend the suit, the Court may, pending the suit, order the husband to furnish the wife with sufficient funds to enable her to prosecute or defend the suit, and also for her maintenance pending the suit.

If the suit be brought by a husband against a wife, the Court may by the decree order the husband to make such allowance to his wife for her maintenance during the remainder of her life as the Court shall think just, and having regard to the condition and station in life of the parties.

Any allowance so ordered shall cease from the time of any subsequent marriage of the wife.

No appeal under Act; but Judge may state case raising question whether conversion has dissolved marriage.

29. No appeal shall lie against any order or decree made or passed by any Court in any suit instituted under this Act; but if, at any stage of the suit, the respondent shall allege by way of defence that the marriage between the parties has been dissolved by the conversion of the petitioner, and that consequently the petitioner is not a Native husband or a Native wife (as the case may be) within the meaning of this Act, the Judge, if he shall entertain any doubt as to the validity of such defence, shall, either of his own motion or on the application of the respondent, state the case and submit it with his own opinion thereon for the decision of the High Court.

Case to state necessary facts and documents, and suit to be stayed.

30. Every such case shall concisely set forth such facts and documents as may be necessary to enable the High Court to decide the questions raised thereby, and the suit shall be stayed until the judgment of such Court shall have been received as hereinafter provided.

Case to be decided by three Judges.

31. Every such case shall be decided by at least three Judges of the High Court, if such Court be the High Court at any of the presidency-towns; and the petitioner and respondent may appear and be heard in the High Court in person or by advocate or vakil.

High Court may refer case to Judge for addition or alterations.

32. If the High Court shall not be satisfied that the statements contained in the case are sufficient to enable it to determine the questions raised thereby, the High Court may refer the case back to the Judge by whom it was stated, to make such additions thereto or alterations therein as the High Court may direct in that behalf.

Sections 33—35.

33. It shall be lawful for the High Court, upon the hearing of any such case, to decide the questions raised thereby, and to deliver its judgment thereon containing the ground on which such decision is founded;

and it shall send to the Judge by whom the case was stated a copy of such judgment under the seal of the Court and the signature of the Registrar, and the Judge shall, on receiving the same, dispose of the case conformably to such judgment.

High Court may decide question raised, and Judge shall dispose of case accordingly.

34. Nothing contained in this Act [a] * * * shall be taken to render invalid any marriage of a Native convert to Roman Catholicism if celebrated in accordance with the rules, rites, ceremonies and customs of the Roman Catholic Church. * * * * * [b]

Saving of Roman Catholic marriages.

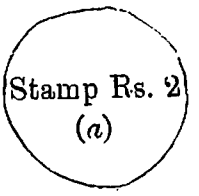
35. This Act shall extend to all the territories that are or shall become vested in Her Majesty or Her successors by the Statutes 21 and 22 Vic., cap. 106, entitled "An Act for the better Government of India," except the Settlement of Prince of Wales' Island, Singapore and Malacca. * * * [c]

Extent of Act.

THE FIRST SCHEDULE.

(*See Section* 7.)

Form of Petition.



To the Judge of the Civil Court of

The day of 18

The petition of *A.B.* of

Sheweth:—

1. That your petitioner was born on or about the day of 18

2. That your petitioner was on the day of in the year 18 lawfully married to *C.D.* at

---

[a], [b] and [c] Certain words repealed by Act XVI of 1874 before the present Act was extended to Mysore have been omitted.

[a] But see Act VII of 1870), Schedule II No. 14, according to which the fee payable is *five* rupees.

3. That the said *C.D.* is now of the age of years or thereabouts.

4. That after his said marriage, your petitioner lived and cohabited with his said wife at aforesaid until the day of 18 ,

5. That previous to the day of 18 your petitioner changed his religion for Christianity, and that on such day he was baptized and became a member of the Church of

6. That on the day of 18 [*at least six months prior to the date of petition,*] the said *C. D.* deserted your petitioner, and has not since resumed cohabitation with him.

7. That such desertion was in consequence of your petitioner's said change of religion.

8. That there is no collusion nor connivance between your petitioner and the said *C. D.*

Your petitioner therefore prays that your Honour will order the said *C. D.* to live and cohabit with your petitioner, or declare that your petitioner's marriage is dissolved. *A.B.*

Form of verification.

I, *A. B.*, the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

THE SECOND SCHEDULE.

(*See Section* 9).

Form of Citation in ordinary cases.

To *C. D.* of

Whereas *A. B.* of , claiming to have been lawfully married to you, the said *C. D.*, has filed his [*or* her] petition against you in the Civil Court of alleging that you, the said *C. D.*, have deserted him [*or* her] for six months in consequence of his [*or* her] having changed his [*or* her] religion for Christianity, and praying that, unless you consent to live and cohabit with him [*or* her], it may be declared that his [*or* her] marriage is dissolved: Now this is to command you that, at the expiration of

days [*at least one month*] from the date of the service of this on you, you do appear in the said Court then and there to make answer to the said petition, a copy whereof, sealed with the seal of the said Court, is herewith served upon you.

And take notice that in default of your so appearing, you will be liable to punishment under section 174 of the Indian Penal Code.

Dated the day of 18 .

(Signed) *E. F.*,
Judge of the Civil Court of

Indorsement to be made after service.

This citation was duly served by *G.H.* on the within named *C.D.* of at on the day of 18 (Signed) *G.H.*

THE THIRD SCHEDULE

(See Section 9.)

Form of Citation in Case of Respondent exempt from Appearance in Court.

To *C. D.* of

Whereas *A. B.* of , claiming to have been lawfully married to you, the said *C. D.*, has filed his [*or* her] petition against you in the Civil Court of , alleging that you, the said *C. D.*, have deserted him [*or* her] for six months in consequence of his [*or* her] having changed his [*or* her] religion for Christianity, and praying that, unless you consent to cohabit with him [*or* her], it may be declared that his [*or* her] marriage is dissolved. Now this is to command you that, at the expiration of days [*at least one month*] from the service of this on you, you do hold yourself in readiness to answer and do answer such interrogatories as may be put to you by commissioners duly authorised in that behalf under a commission issued by this Court, in reference to the said petition, a copy whereof, sealed with the seal of the said Court, is herewith served upon you.

And take notice that, in default of your so holding yourself in readiness and answering such interrogatories, you will be liable to punishment under section 174 of the Indian Penal Code.

Dated the day of 18 .

(Signed) *E. F.*,
Judge of the Civil Court of

Indorsement to be made after service.

The citation was duly served by *G. H.* on the within-named *C. D.* of at on the day of 18 .

(Signed) *G. H.*

ACT XXV OF 1867.

Notification by the Government of India, Foreign Department, Judicial, No. 176, dated Simla, the 12th September 1867.

His Excellency the Governor-General of India in Council is pleased to declare Acts XX of 1847* and XXV of 1867 (for the Regulation of Printing Presses, etc.), in force in the Province of Mysore.

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* For Act XX of 1847, *Vide supra.*

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ACT XXV OF 1867.

(RECEIVED THE GOVERNOR-GENERAL'S ASSENT ON THE 22ND MARCH 1867.)

An Act for the regulation of Printing Presses and Newspapers, for the preservation of copies of books printed in [a] *the Territories of Mysore,* [a] *and for the registration of such books.*

Whereas it is expedient to provide for the regulation of printing presses and of periodicals containing news, for the preservation [b] of copies of every book printed or lithographed in [a] the Territories of Mysore, [a] and for the registration of such books; It is hereby enacted as follows:— Preamble.

PART I.

PARLIMINARY.

[c]**1.** In this Act, unless there shall be something repugnant in the subject or context,— Interpretation clause

"book" includes every volume, part or division of a volume, and pamphlet, in any language and every sheet of music, map, chart or plan separately printed or lithographed; "Book."

"Magistrate" means any person exercising the full powers of a Magistrate [d]; 'Magistrate.'

words in the singular include the plural, and *vice versa*; Number.

words denoting the masculine gender include females. Gender.

2. [*Repeal of Act XI of 1835.*] *Repealed by Act I of 1894, s. 4.*

[a-a] These words in the Preamble were substituted for the original words by Act I of 1894, s. 2.

[b] The word "three" in the preamble, which was repealed by Act 94, s. 1, has been omitted.

[c] The interpretation clauses relating to "British India" and "Local Government" in s. 1 were repealed by Act I of 1894, s. 3.

[d] Certain words in the definition of "Magistrate" in s. 1, which were repealed by Act I of 1894, s. 3, have been omitted.

Sections 3—5.

PART II.

OF PRINTING PRESSES AND NEWSPAPERS.

Particulars to be printed on books and papers.

3. Every book or paper printed within [a] the Territories of Mysore [a] shall have printed legibly on it the name of the printer and the place of printing, and (if the book or paper be published), of the publisher and the place of publication.

Keeper of printing-press to make declaration.

4. No person shall, within [a] the territories of Mysore, [a] keep in his possession any press for the printing of books or papers, who shall not have made and subscribed the following declaration before the Magistrate within whose local jurisdiction such press may be:—

"I, *A B*, declare that I have a press for printing at——."

And this last blank shall be filled up with a true and precise description of the place where such press may be situate.

Rules as to publication of printed periodicals containing public news.

5. No printed periodical work, containing public news or comments on public news, shall be published in [a] the Territories of Mysore, [a] except in conformity with the rules hereinafter laid down:

(1) The printer and the publisher of every such periodical work shall appear before the Magistrate within whose local jurisdiction such work shall be published, and shall make and subscribe, in duplicate, the following declaration:—

"I, *A B*, declare that I am the printer [*or* publisher, *or* printer and publisher] of the periodical work entitled ——and printed [*or* published, *or* printed and published, *as the case may be*] at——."

And the last blank in this form of declaration shall be filled up with a true and precise account of the premises where the printing or publication is conducted:

(2) As often as the place of printing or publication is changed, a new declaration shall be necessary:

(3) As often as the printer or the publisher who shall have made such declaration as is aforesaid shall leave [a] the Territories of Mysore, [a] a new declaration from a printer or publisher resident within the said territories shall be necessary.

[a-a] These words in sections 3, 4 and 5 were substituted for the original words by Act I of 1894, s. 2.

Sections 6—8.

Authentication of declaration.

6. Each of the two originals of every declaration so made and subscribed as is aforesaid, shall be authenticated by the signature and official seal of the Magistrate before whom the said declaration shall have been made.

Deposit.

One of the said originals shall be deposited among the records of the office of the Magistrate, and the other shall be deposited among the records of the [a] Chief Court [a] or (b) other principal Civil Court of original jurisdiction for the place where (b) the said declaration shall have been made.

Inspection and supply of copies.

The officer in charge of each original shall allow any person to inspect that original on payment of a fee of one rupee, and shall give to any person applying a copy of the said declaration, attested by the seal of the Court which has the custody of the original, on payment of a fee of two rupees.

Office copy of declaration to be *prima facie* evidence.

7. In any legal proceeding whatever, as well civil as criminal, the production of a copy of such declaration as is aforesaid, attested by the seal of some Court empowered by this Act to have the custody of such declarations, shall be held (unless the contrary be proved) to be sufficient evidence, as against the person whose name shall be subscribed to such declaration, that the said person was printer or publisher, or printer and publisher (according as the words of the said declaration may be) of every portion of every periodical work whereof the title shall correspond with the title of the periodical work mentioned in the declaration.

New declaration by persons who have signed declaration and subsequently ceased to be printers or publishers.

8. Provided always that any person who may have subscribed any such declaration as is aforesaid, and who may subsequently cease to be the printer or publisher of the periodical work mentioned in such declaration, may appear before any Magistrate, and make and subscribe in duplicate the following declaration :—

"I, *A B* declare that I have ceased to be the printer [*or* publisher, *or* printer and publisher] of the periodical work entitled———."

Authentication and filing.

Each original of the latter declaration shall be authenticated by the signature and seal of the Magistrate before whom the said latter declaration shall have been made, and one original of the said latter declaration shall be filed along with each original of the former declaration.

Inspection and supply of copies.

The officer in charge of each original of the latter declaration shall allow any person applying to inspect that

[a-a, b-b,] These words in s. 6 were respectively substituted for the original words by Act I of 1894, s. 5.

Section 9.

original on payment of a fee of one rupee, and shall give to any person applying a copy of the said latter declaration, attested by the seal of the Court having custody of the original, on payment of a fee of two rupees.

Putting copy in evidence.

In all trials in which a copy, attested as is aforesaid, of the former declaration, shall have been put in evidence, it shall be lawful to put in evidence a copy, attested as is aforesaid, of the latter declaration, and the former declaration shall not be taken to be evidence that the declaration was, at any period subsequent to the date of the latter declaration printer or publisher of the periodical work therein mentioned.

PART III [a].

DELIVERY OF BOOKS.

Copies of books printed after commencement of Act to be delivered gratis to Government.

9. Printed or lithographed copies of the whole of every book which shall be printed or lithographed in the Territories of Mysore after this Act shall come into force, together with all maps, prints or other engravings belonging thereto, finished and coloured in the same manner as the best copies of the same, shall, notwithstanding any agreement (if the book be published) between the printer and publisher thereof, be delivered by the printer at such place and to such officer as the Government of Mysore shall, by notification in the official Gazette, from time to time direct, and free of expense to the Government of Mysore, as follows, that is to say :—

(*a*) in any case, within one calendar month after the day on which any such book shall first be delivered out of the press, one such copy, and,

(*b*) if within one calendar year from such day the Government of Mysore shall require the printer to deliver other such copies not exceeding two in number, then within one calendar month after the day on which any such requisition shall be made by the Government of Mysore on the printer, another such copy, or two other such copies, as the Government of Mysore may direct.

The copies so delivered being bound, sewed or stitched together and upon the best paper on which any copies of the book shall be printed or lithographed.

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[a] This part was substituted for the original Part III by Act I of 1894, s. 6.

Sections 10—14.

The publisher or other person employing the printer shall, at a reasonable time before the expiration of the said month, supply him with all maps, prints and engravings finished and coloured as aforesaid, which may be necessary to enable him to comply with the requirements aforesaid.

Nothing in the former part of this section shall apply to—

(*i*) any second or subsequent edition of a book in which edition no additions or alterations either in the letterpress or in the maps, prints or other engravings belonging to the book have been made, and a copy of the first or some preceding edition of which book has been delivered under this Act, or

(*ii*) any periodical work published in conformity with the rules laid down in section 5 of this Act.

Receipt for copies delivered under section 9.

10. The officer to whom a copy of a book is delivered under the last foregoing section shall give to the printer a receipt in writing therefor.

Disposal of copies delivered under section 9.

11. The copy delivered pursuant to clause (*a*) and the copies, if any, delivered pursuant to clause (*b*) of the first paragraph of section 9 of this Act shall be disposed of as the Government of Mysore shall from time to time determine.

PART IV.

PENALTIES.

Penalty for printing contrary to rule in section 3.

12. Whoever shall print or publish any book or paper otherwise than in conformity with the rule contained in section 3 of this Act shall, on conviction before a Magistrate, be punished by fine not exceeding five thousand rupees, or by simple imprisonment for a term not exceeding two years, or by both.

Penalty for keeping press without making declaration required by section 4.

13. Whoever shall keep in his possession any such press as aforesaid, without making such a declaration as is required by section 4 of this Act, shall, on conviction before a Magistrate, be punished by fine not exceeding five thousand rupees, or by simple imprisonment for a term not exceeding two years, or by both.

Punishment for making false statement.

14. Any person who shall, in making any declaration under the authority of this Act, make a statement which is false, and which he either knows or believes to be false, or does not believe to be true, shall, on conviction before a

Magistrate, be punished by fine not exceeding five thousand rupees, and imprisonment for a term not exceeding two years.

Penalty for printing or publishing periodicals without conforming to rules.

15. Whoever shall print or publish any such periodical work as is hereinbefore described, without conforming to the rules hereinbefore laid down, or whoever shall print or publish, or shall cause to be printed or published, any such periodical work, knowing that the said rules have not been observed with respect to that work, shall, on conviction before a Magistrate, be punished with fine not exceeding five thousand rupees, or imprisonment for a term not exceeding two years, or both.

Penalty for not delivering books or not supplying printer with maps.

[a] **16.** If any printer of any such book as is referred to in section 9 of this Act shall neglect to deliver copies of the same pursuant to that section, he shall for every such default forfeit to the Government of Mysore such sum not exceeding fifty rupees as a Magistrate having jurisdiction in the place where the book was printed may, on the application of the officer to whom the copies should have been delivered or of any person authorised by that officer in this behalf, determine to be in the circumstances a reasonable penalty for the default, and, in addition to such sum, such further sum as the Magistrate may determine to be the value of the copies which the printer ought to have delivered.

If any publisher or other person employing any such printer shall neglect to supply him, in the manner prescribed in the second paragraph of section 9 of this Act, with the maps, prints or engravings which may be necessary to enable him to comply with the provisions of that section, such publisher or other person shall for every such default forfeit to the Government of Mysore such sum not exceeding fifty rupees as such a Magistrate as aforesaid may, on such an application as aforesaid, determine to be in the circumstances a reasonable penalty for the default, and, in addition to such sum, such further sum as the Magistrate may determine to be the value of the maps, prints or engravings which such publisher or other person ought to have supplied.

Recovery of forfeitures and disposal thereof and of fines.

[a] **17.** Any sum forfeited to the Government of Mysore under the last foregoing section may be recovered, under the warrant of the Magistrate determining the sum, or of his successor in office, in the manner authorised by the Code of

[a-a] These sections were substituted for the original sections 16 and 17 by Act I of 1894, s. 7.

Section 18.

Criminal Procedure for the time beng in force, and within the period prescribed by the Indian Penal Code, for the levy of a fine.

All fines or forfeitures under this Part of this Act shall, when recovered, be disposed of as the Government of Mysore shall, from time to time, direct.

PART V.

REGISTRATION OF BOOKS.

Registration of memoranda of books.

18. There shall be kept at such office and by such officer as [a] the Government of Mysore [a] shall appoint in this behalf, a book to be called a Catalogue of Books printed in [a] the Territories of Mysore, [a] wherein shall be registered a memorandum of every book which shall have been delivered [b] pursuant to clause (*a*) of the first paragraph of section 9 [*b*] of this Act. Such memorandum shall (so far as may be practicable) contain the following particulars (that is to say):—

(1) the title of the book and the contents of the title-page, with a translation into English of such title and contents, when the same are not in the English language:
(2) the language in which the book is written:
(3) the name of the author, translator or editor of the book or any part thereof:
(4) the subject:
(5) the place of printing and the place of publication:
(6) the name or firm of the printer and the name or firm of the publisher:
(7) the date of issue from the press or of the publication:
(8) the number of sheets, leaves or pages:
(9) the size:
(10) the first, second or other number of the edition:
(11) the number of copies of which the edition consists:
(12) whether the book is printed or lithographed:

[a-a, b-b] These words, etc., in s. 18 were respectively substituted for the original words by Act I of 1894, sections 2 and 8.

Sections 19—23.

(13) the price at which the book is sold to the public: and

(14) the name and residence of the proprietor of the copyright or of any portion of such copyright.

Such memorandum shall be made and registered in the case of each book as soon as practicable after the delivery of the [a] copy thereof pursuant to clause (*a*) of the first paragraph of section 9 [a].

* * *

Publication of memoranda registered.

19. The memoranda registered during each quarter in the said Catalogue shall be published in the [b] official Gazette [b] as soon as may be after the end of such quarter. [c]

PART VI.

MISCELLANEOUS.

Power to make rules.

20. [d] The Government of Mysore [d] shall have power to make such rules as may be necessary or desirable for carrying out the objects of this Act, and from time to time to repeal, alter and add to such rules.

Publication.

All such rules, and all repeals and alterations thereof, and additions thereto, shall be published in the [b] official Gazette [b].

Power to exclude any class of books from operation of Act.

21. [d] The Government of Mysore [d] may, by notification in the [b] official Gazette, [b] exclude any class of books from the operation of the whole or any part or parts of this Act.

22. [*Continuance of parts of Act.*] *Repealed by Act I of* 1824, s. 4.

Commencement of Act.

23. This Act shall come into operation on the first day of July 1867.

[a-a] These words, etc., in s. 18 were respectively substituted for the original words by Act I of 1894, s. 8.

[*-*] ***These words in Section 18 were repealed by Section 31 of Act XI of 1933.

[b-b, d-d] These words in sections 19, 20 and 21 were respectively substituted for the original words by Act I of 1894, s. 2.

[c] Certain words in s. 19, repealed by Act I of 1894, s. 4, have been omitted.

(*Pages 357—376 both inclusive*)

ACT No. XXVI OF 1870.

(The Prisons Act, 1870) has been repealed by the Prisons Act, 1943.

(ACT No. XLIV OF 1943.)

ACT I OF 1871.

Notification by the Government of India, Foreign Department, Judicial, No. 58 J., dated Fort William, 5th April 1872.

His Excellency the Viceroy and Governor-General in Council has been pleased to extend the provisions of Act I of 1871, "The Cattle Tresspass Act," to the Province of Mysore.

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ACT I OF 1871.

RECEIVED THE GOVERNOR-GENERAL'S ASSENT ON 13TH JANUARY 1871.

(*An Act to consolidate and amend the law relating to Trespasses by Cattle.*)

WHEREAS it is expedient to consolidate and amend the law relating to trespasses by cattle; It is hereby enacted as follows:— Preamble.

CHAPTER I.

PRELIMINARY.

Title and extent.

[a] **1.** (1) This Act may be called the Cattle Trespass Act, 1871.

(2) It extends to the whole of the Territories of Mysore except such local areas as the Government of Mysore, by notification in the official Gazette may, from time to time, exclude from its operation.

(3) The Government of Mysore may at any time, by notification in the official Gazette, cancel or vary a notification under sub-section (2).

Repeal of Acts.

[b] **2.** The Acts mentioned in the schedule hereto annexed are repealed.

References to repealed Acts.

References to any of the said Acts in Acts passed subsequently thereto shall be read as if made to this Act.

All pounds established, pound-keepers appointed, and villages determined, under Act III of 1857 (*relating to trespasses by cattle*) shall be deemed to be respectively established, appointed, and determined under this Act].

Interpretation clause.

3. In this Act—

'Officer of Police' includes also village-watchman, and

'Cattle' includes also elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids, [c] and

'Local authority' means any body of persons for the time being invested by law with the control and administration of any matters within a specified local area, and

'Local fund' means any fund under the control or management of a local authority. [c]

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[a] This section was substituted for the original s. 1 by Act VIII of 1892, s. 1.
[b] This section was inadvertently omitted to be repealed by Act VIII of 1892, though inapplicable to Mysore.
[c cc] These words were added to s. 3 by Act VIII of 1892, s. 2.

Sections 4—8.

CHAPTER II.

POUNDS AND POUND-KEEPERS.

Establishment of pounds.

4. Pounds shall be established at such places as the Magistrate of the District, subject to the general control of the [a] Local Government, [a] from time to time directs.

The village by which every pound is to be used shall be determined by the Magistrate of the District.

Control of pounds. Rates of charge for feeding impounded cattle.

5. The pounds shall be under the control of the Magistrate of the District, and he shall fix, and may from time to time alter, the rates of charge for feeding and watering impounded cattle.

Appointment of *ex-officio* pound-keepers.

6. [b] The heads of villages shall be *ex-officio* keepers of village pounds:

Provided that, where it is deemed necessary, the Magistrate of the District shall be competent to relieve the Head of the village of his charge and appoint another instead. [b]

Suspension or removal of pound-keepers.

Every pound-keeper appointed by the Magistrate of the District may be suspended or removed by such Magistrate.

Pound-keepers may hold other offices.

Any pound-keeper may hold simultaneously any other office under Government.

Pound-keepers to be public servants.

Every pound-keeper shall be deemed a public servant within the meaning of the Indian Penal Code.

DUTIES OF POUND-KEEPERS.

To keep registers and furnish returns.

7. Every pound-keeper shall keep such registers and furnish such returns as the [a] Local Government [a] from time to time directs.

To register seizures.

8. When cattle are brought to a pound, the pound-keeper shall enter in his register—

(*a*) the number and description of the animals,

(*b*) the day and hour on and at which they were so brought,

(*c*) the name and residence of the seizer, and

(*d*) the name and residence of the owner, if known,

and shall give the seizer or his agent a copy of the entry.

[a-a] *Sic*: should be "Government of Mysore." Provision for the necessary substitution has by inadvertence been ommitted to be made in Act VIII of 1892.

[b-b] These words were substituted for the original first paragraph and its proviso by Act VIII of 1892, s. 3.

Sections 9—12.

9. The pound-keeper shall take charge of, feed and water the cattle until they are disposed of as hereinafter directed. To take charge of and feed cattle.

CHAPTER III.

IMPOUNDING CATTLE.

10. The cultivator or occupier of any land, Cattle damaging land.

or any person who has advanced cash for the cultivation of the crop or produce on any land,

or the vendee or mortgagee of such crop or produce, or any part thereof,

may seize or cause to be seized any cattle trespassing on such land and doing damage thereto or to any crop or produce thereon, and [a] send them or cause them to be sent within twenty-four hours [a] to the pound established for the village in which the land is situate.

All officers of police shall, when required, aid in preventing (*a*) resistance to such seizures and (*b*) rescues from persons making such seizures. Police to aid seizures.

11. Persons in charge of public roads, pleasure-grounds, plantations, canals, drainage-works, embankments and the like, and officers of police may seize, or cause to be seized, any cattle doing damage to such roads, grounds, plantations, canals, drainage-works, embankments and the like, or the sides or slopes of such roads, canals, drainage-works or embankments, or found straying thereon, Cattle damaging public roads, canals and embankments.

and shall [b] send them or cause them to be sent within twenty-four hours [b] to the nearest pound.

12. For every head of cattle impounded as aforesaid, the pound-keeper shall levy a fine according to the following scale:— Fines for cattle impounded.

Elephant	....	....	Two rupees.
Camel or buffalo	....	....	Eight annas.
Horse, mare, gelding, pony, colt, filly, mule, bull, bullock, cow or heifer	....	....	Four annas.
Calf, ass or pig	....	....	Two annas.
Ram, ewe, sheep, lamb, goat or kid	....	....	One anna.

[a-a] These words in s. 10 were substituted for the words "take them or cause them to be taken without unnecessary delay" by Act VIII of 1892, s. 4.

[b-b] These words in s. 11 were substituted for the words "take them without unnecessary delay" by Act VIII of 1892, s. 5.

Sections 13—14.

[a] Provided that, when it appears to the Government of Mysore from the report of a Magistrate of a District, or on the representation of a local authority, that, in any local area subject to the jurisdiction or control of such Magistrate or authority, cattle are habitually allowed to trespass on land and damage crops or other produce thereon, the Government of Mysore may, by notification in the official Gazette, direct that, for every head of cattle of any kind specified therein which may be seized within such local area and impounded as aforesaid, the pound-keeper shall levy such fine, not exceeding double the fine mentioned in the foregoing scale, as may be prescribed in the notification.

All fines so levied shall be sent to the Magistrate of the District through such officer as the [b] Local Government [b] from time to time directs.

List of fines and charges for feeding.

A list of the fines and of the rates of charges for feeding and watering cattle shall be stuck up in a conspicuous place on or near to every pound.

[c] The Government of Mysore may at any time, by notification in the official Gazette, cancel or vary a notification under the proviso to the first paragraph of this section.

CHAPTER IV.

DELIVERY OR SALE OF CATTLE.

Procedure when owner claims the cattle and pays fines and charges.

13. If the owner of impounded cattle or his agent appear and claim the cattle, the pound-keeper shall deliver them to him on payment of the fines and charges incurred in respect of such cattle.

The owner or his agent on taking back the cattle, shall sign a receipt for them in the register kept by the pound-keeper.

Procedure if cattle be not claimed within a week.

14. If the cattle be not claimed within seven days [or within three days in the case of asses impounded] from the date of their being impounded, the pound-keeper shall report the fact to the officer in charge of the nearest police-station, or to such other officer as the Magistrate of the District appoints in this behalf.

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[a] This proviso was added to the first paragraph of s. 12 by Act VIII of 1892, s. 6 (1).

[b-b] *Vide* foot-note [a-a] on page 386.

[c] This paragraph was added to s. 12 by Act VIII of 1892, s. 6. (2).

[ ] These words were inserted by section (a) of Act IV of 1939.

Sections 15-16.

Such officer shall thereupon stick up in a conspicuous part of his office a notice stating—

(*a*) the number and description of the cattle,

(*b*) the place where they were seized,

(*c*) the place where they are impounded,

and shall cause proclamation of the same to be made by beat of drum in the village and at the market-place nearest to the place of seizure.

If the cattle be not claimed within seven days [or within four days in the case of asses impounded:] from the date of the notice, they shall be sold by public auction by the said officer, or an officer of his establishment deputed for that purpose, at such place and time, and subject to such conditions as the Magistrate of the District by general or special order from time to time directs:

Provided that if any such cattle are, in the opinion of the Magistrate of the District, not likely to fetch a fair price if sold as aforesaid, they may be disposed of in such manner as he thinks fit.

Delivery to owner disputing legality of seizure but making deposit.

15. If the owner or his agent appear and refuse to pay the said fines and expenses, on the ground that the seizure was illegal and that the owner is about to make a complaint under section twenty, then, upon deposit of the fines and charges incurred in respect of the cattle, the cattle shall be delivered to him.

Procedure when owner refuses or omits to pay the fines and expenses.

16. If the owner or his agent appear, and refuse or omit to pay or (in the case mentioned in section fifteen) to deposit the said fines and expenses, the cattle, or as many of them as may be necessary, shall be sold by public auction by such officer, at such place and time, and subject to such conditions, as are referred to in section fourteen.

Deduction of fines and expenses.

The fines leviable and the expenses of feeding and watering, together with the expenses of sale, if any, shall be deducted from the proceeds of the sale.

Delivery of unsold cattle and balance of proceeds.

The remaining cattle and the balance of the purchase-money, if any, shall be delivered to the owner or his agent, together with an account showing—

(*a*) the number of cattle seized,

(*b*) the time during which they have been impounded,

(*c*) the amount of fines and charges incurred,

(*d*) the number of cattle sold,

(*e*) the proceeds of sale, and

(*f*) the manner in which those proceeds have been disposed of.

[ ] These words were inserted by Section (b) of Act IV of 1989.

Sections 17—20.

Receipt.

The owner or his agent shall give a receipt for the cattle delivered to him and for the balance of the purchase-money (if any) paid to him according to such account.

Disposal of fines, expenses and surplus proceeds of sale.

17. The officer by whom the sale was made shall send to the Magistrate of the District the fines so deducted.

The charges for feeding and watering deducted under section sixteen shall be paid over to the pound-keeper, who shall also retain and appropriate all sums received by him on account of such charges under section thirteen.

The surplus unclaimed proceeds of the sale of cattle shall be sent to the Magistrate of the District, who shall hold them in deposit for three months, and if no claim thereto be preferred and established within that period, shall, at its expiry, dispose of them as hereinafter provided.

Application of fines and unclaimed proceeds of sales.

18. Out of the sums received on account of fines and the unclaimed proceeds of the sale of cattle, shall be paid—

(*a*) the salaries allowed to pound-keepers under the orders of the [a] Local Government [a];

(*b*) the expenses incurred for the construction and maintenance of pounds, or for any other purpose connected with the execution of this Act;

and the surplus (if any) shall be applied, under orders of the [a] Local Government [a] to the construction and repair of roads and bridges and to other purposes of public utility.

Officers and pound-keepers not to purchase cattle at sales under Act.

19. No officer of police, or other officer or pound-keeper appointed under the provisions herein contained shall, directly or indirectly, purchase any cattle at a sale under this Act.

Pound-keepers when not to release impounded cattle.

No pound-keeper shall release or deliver any impounded cattle otherwise than in accordance with the former part of this chapter, unless such release or delivery is ordered by a Magistrate or Civil Court.

[b] CHAPTER V.

COMPLAINTS OF ILLEGAL SEIZURE OR DETENTION.

Power to make complaints.

20. Any person whose cattle have been seized under this Act, or, having been so seized, have been detained in contravention of this Act, may, at any time within ten days from the date of the seizure, make a complaint to

[a-a] *vide* foot-note [a-a] on page 386.

[b] This chapter was substituted for the original chapter V by Act VIII of 1892, s. 7.

the Magistrate of the District, or any Magistrate authorized to receive and try charges without reference by the Magistrate of the District.

Procedure on complaint.

21. The complaint shall be made by the complainant in person, or by an agent personally acquainted with the circumstances. It may be either in writing or verbal. If it be verbal, the substance of it shall be taken down in writing by the Magistrate.

If the Magistrate, on examining the complainant or his agent, sees reason to believe the complaint to be well founded, he shall summon the person complained against, and make an enquiry into the case.

Compensation for illegal seizure or detention.

22. If the seizure or detention be adjudged illegal, the Magistrate shall award to the complainant, for the loss caused by the seizure or detention, reasonable compensation, not exceeding one hundred rupees, to be paid by the person who made the seizure or detained the cattle, together with all fines paid and expenses incurred by the complainant in procuring the release of the cattle ;

Release of cattle.

and, if the cattle have not been released, the Magistrate shall, besides awarding such compensation, order their release and direct that the fines and expenses leviable under this Act shall be paid by the person who made the seizure or detained the cattle.

Recovery of compensation.

23. The compensation, fines and expenses mentioned in section twenty-two may be recovered as if they were fines imposed by the Magistrate.

CHAPTER VI.

PENALTIES.

Penalty for forcibly opposing the seizure of cattle or rescuing the same.

24. Whoever forcibly opposes the seizure of cattle liable to be seized under this Act,

and whoever rescues the same after seizure, either from a pound, or from any person taking or about to take them to a pound, such person being near at hand and acting under the powers conferred by this Act,

shall, on conviction before a Magistrate, be punished with imprisonment for a period not exceeding six months, or with fine not exceeding five hundred rupees, or with both.

Sections 25—28.

Recovery of penalty for mischief committed by causing cattle to trespass.

25. Any fine imposed [*a*] under the next following section or [a] for the offence of mischief by causing cattle to trespass on any land may be recovered by sale of all or any of the cattle by which the trespass was committed, whether they were seized in the act of trespassing or not, and whether they are the property of the person convicted of the offence, or were only in his charge when the trespass was committed.

Penalty for damage caused to land or crops or public roads by pigs.

26. Any owner or keeper of pigs, who through neglect or otherwise, damages or causes or permits to be damaged any land, or any crop or produce of land, or any public road, by allowing such pigs to trespass thereon, shall, on conviction before a Magistrate, be punished with fine not exceeding ten rupees.

[*b*] The Government of Mysore by notification in the official Gazette, may from time to time, with respect to any local area specified in the notification, direct that the foregoing portion of this section shall be read as if it had reference to cattle generally, or to cattle of a kind described in the notification, instead of to pigs only, or as if the words 'fifty rupees' were substituted for the words 'ten rupees' or as if there were both such reference and such substitution.

[*c*] The Government of Mysore may, at any time, by notification in the official Gazette, cancel or vary a notification under this section.

Penalty on pound-keeper failing to perform duties.

27. Any pound-keeper releasing or purchasing or delivering cattle contrary to the provisions of section nineteen, or omitting to provide any impounded cattle with sufficient food and water, or failing to perform any of the other duties imposed upon him by this Act, shall, over and above any other penalty to which he may be liable, be punished, on conviction before a Magistrate, with fine not exceeding fifty rupees.

Such fines may be recovered by deductions from the pound-keeper's salary

Application of fines recovered under section 25, 26, or 27.

28 All fines recovered under section twenty-five, section twenty-six or section twenty-seven may be appropriated in whole or in part as compensation for loss or damage proved to the satisfaction of the convicting Magistrate.

[a-a] These words in s. 25 were inserted by Act VIII of 1892, s. 8.
[b] This paragraph was added to s. 26 by Act VIII of 1892, s. 9.
[c] This paragraph was added to s. 26 by Act VIII of 1892, s. 9.

Sections 29-31.

CHAPTER VII.

SUITS FOR COMPENSATION.

Saving of right to sue for compensation.

29. Nothing herein contained prohibits any person whose crops or other produce of land have been damaged by trespass of cattle from suing for compensation in any competent Court.

Set-off.

30. Any compensation paid to such person under this Act by order of the convicting Magistrate shall be set-off and deducted from any sum claimed by or awarded to him as compensation in such suit.

[a] CHAPTER VIII.

SUPPLEMENTAL.

Power for Government of Mysore to transfer certain functions to local authority and direct credit of surplus receipts to local fund.

31. The Government of Mysore may, from time to time, by notification in the official Gazette—

(*a*) transfer to any local authority, within any part of the territories under its administration in which this Act is in operation, all or any of the functions of the Government of Mysore or the Magistrate of the District under this Act, within the local area subject to the jurisdiction of the local authority, or

(*b*) direct that the whole or any part of the surplus accruing in any district under section eighteen of this Act shall be placed to the credit of such local fund or funds as may be formed for any local area or local areas comprised in that district,

and may, from time to time, by notification in the official Gazette, cancel or vary any notification under this section.

[b] [*SCHEDULE.*]

(*See section* 2.)

Number and year	Title of Act
III of 1857 ...	An Act relating to trespasses by cattle.
V of 1860 ...	An Act to amend Act III of 1857 (relating to trespasses by cattle).
XXII of 1861 ...	An Act to amend Act III of 1857 (relating to trespasses by cattle).

[a] Chapter VIII was added by Act VIII of 1892, s. 10.

[b] This schedule was inadvertently omitted to be repealed by Act VIII of 1892. *Vide* note (b) on page 385.

Sections 1—2.

ACT No. XXIII OF 1871.

Notification by the Government of India, Foreign Department, Judicial, No. 169, *dated Simla, the* 22*nd August* 1873.

His Excellency the Viceroy and Governor-General in Council is pleased to extend the provisions of Act XXIII of 1871 (The Pensions Act) to the Province of Mysore subject to the following modifications, namely—

Section 2 together with the schedule mentioned therein, and also clause (2) of section 7, to be omitted.

Wherever the words "Local Government," "Chief Revenue authority" and "Chief Controlling Revenue authority" occur in the Act, the words "Chief Commissioner" to be substituted.*

In section 5, the words "subject to the general control of the Local Government," and in section 14 the words "with the consent of the Local Government," to be omitted.

(RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL ON THE 8TH AUGUST 1871.)

An Act to consolidate and amend the law relating to pensions and grants by Government of money or land-revenue.

Preamble. WHEREAS it is expedient to consolidate and amend the law relating to pensions and grants by Government of money or land-revenue; It is hereby enacted as follows:—

I. Preliminary.

Short-title. **1.** This Act may be called "The Pensions Act, 1871;"

Extent of Act. It extends to the whole of British India;

Commencement. And it shall come into force on the date of the passing thereof but not so as to affect any suit in respect of a pension or grant of money or land-revenue which may have been instituted before such date.

2. (*Repeal of enactments.*) *Omitted as directed by Notification No.* 169, *dated the* 22*nd August* 1873.

* As to this, however, see Notification of the Government of Mysore No. 153, dated the 2nd September 1881, according to which the expression "Local Government" occurring in any Act in force in Mysore is to denote "the Government of His Highness the Maharaja of Mysore." The words "Chief Revenue authority" and "Chief Controlling Revenue authority" in the present Act must, apparently, be construed in a similar manner; and hence the substitution indicated above has not been made.

Sections 3—8.

Interpretation-clause.

3. In this Act, the expression "grant of money or land revenue" includes anything payable on the part of Government in respect of any right, privilege, perquisite or office.

II. Rights to Pensions.

Bar of suits, relating to pension.

4. Except as hereinafter provided, no Civil Court shall entertain any suit relating to any pension or grant of money or land revenue conferred or made by the British or any former Government, whatever may have been the consideration for any such pension or grant, and whatever may have been the nature of the payment, claim or right for which such pension or grant may have been substituted.

Claims to be made to Collector or other authorized officer.

5. Any person having a claim relating to any such pension or grant may prefer such claim to the Collector of the District or Deputy Commissioner or other officer authorized in this behalf by the Local Government; and such Collector, Deputy Commissioner or other officer shall dispose of such claim in accordance with such rules as the Chief Revenue authority may [a] from time to time prescribe in this behalf.

Civil Court empowered to take cognizance of such claims.

6. A Civil Court, otherwise competent to try the same, shall take cognizance of any such claim upon receiving a certificate from such Collector, Deputy Commissioner or other officer authorized in that behalf that the case may be so tried, but shall not make any order or decree in any suit whatever by which the liability of Government to pay any such pension or grant as aforesaid is affected directly or indirectly.

Pensions for lands held under grants in perpetuity.

7. Nothing in sections four and six applies to—

(1) any inam of the class referred to in the first section of Madras Act No. IV of 1862; [b]

III. Mode of Payment.

Payment to be made by Collector or other authorized officer.

8. All pensions or grants by Government of money or land revenue shall be paid by the Collector or the Deputy Commissioner or other authorized officer, subject to such rules as may, from time to time, be prescribed by the Chief Controlling Revenue authority.

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[a] The words "subject to the general control of the Local Government" in section 5 have been omitted as directed by Notification No. 169, dated the 22nd August 1873.

[b] Clause (2) of section 7 has been omitted as directed by Notification No. 169, dated the 22nd August 1873.

Sections 9-14.

Saving of rights of grantees of land revenue.

9. Nothing in sections four and eight shall affect the right of a grantee of land revenue, whose claim to such grant is admitted by Government, to recover such revenue from the persons liable to pay the same under any law for the time being in force for the recovery of the rent of land.

Commutation of pensions.

10. The Local Government may, with the consent of the holder, order the whole or any part of his pension or grant of money or land revenue to be commuted for a lumpsum on such terms as may seem fit.

IV. Miscellaneous.

Exemption of pension from attachment.

11. No pension granted or continued by Government on political considerations, or on account of past services or present infirmities or as a compassionate allowance,

and no money due or to become due on account of any such pension or allowance,

shall be liable to seizure, attachment or sequestration by process of any Court in British India, at the instance of a creditor, for any demand against the pensioner, or in satisfaction of a decree or order of any such Court.

Assignments, etc., in anticipation of pension, to be void.

12. All assignments, agreements, orders, sales and securities of every kind made by the person entitled to any pension, pay or allowance mentioned in section eleven, in respect of any money not payable at or before the making thereof, on account of any such pension, pay or allowance, or for giving or assigning any future interest therein, are null and void.

Reward to informers.

13. Whoever proves to the satisfaction of the Local Government that any pension is fraudulently or unduly received by the person enjoying the benefit thereof, shall be entitled to a reward equivalent to the amount of such pension for the period of six months.

Power to make rules.

14. The Chief Controlling Revenue authority may [a] from time to time makes rules consistent with this Act respecting all or any of the following matters:—

(1) the place and times at which, and the person to whom any pension shall be paid,

(2) inquiries into the identity of claimants,

(3) records to be kept on the subject of pensions,

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[a] The words "with the consent of the Local Government" in section 14 have been omitted as directed by Notification No. 169, dated the 22nd August 1873.

(4) transmission of such records,
(5) correction of such records,
(6) delivery of certificates to pensioners,
(7) registers of such certificates,
(8) reference to the Civil Court under section six, of persons claiming a right of succession to, or participation in, pensions or grants of money or land revenue payable by Government,

and generally for the guidance of officers under this Act.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

[*SCHEDULE.*] *Omited as directed by Notification No.* 169, *dated the* 22*nd August* 1873.

THE

INDIAN EVIDENCE ACT, 1872

(ACT NO. 1 OF 1872)

(As introduced into Mysore by the Chief Commissioner's Notification No. General 126, dated the 27th July 1879 and as modified by the British Indian Act XVIII of 1872 and Regulations III of 1899, X of 1900, VIII of 1901, III of 1912 and X of 1918)

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ACT I OF 1872.

The Indian Evidence Act, 1872.

[As modified by the British Indian Act, XVIII of 1872 and Acts III of 1899, X of 1900, VIII of 1901, III of 1912 and X of 1918.]

WHEREAS it is expedient to consolidate, define and amend the Law of Evidence; It is hereby enacted as follows:— Preamble.

PART I.

Relevancy of Facts.

CHAPTER I.

PRELIMINARY.

1. This Act may be called the Indian Evidence Act, 1872. Short title.

It extends to the whole of British India, and applies to all judicial proceedings in or before any Court including Courts-martial, but not to affidavits presented to any Court or officer, nor to proceedings before an arbitrator; Extent.

and it shall come into force on the first day of September 1872. Commencement of Act.

2. On and from that day the following laws shall be repealed:— Repeal of enactments.

(1) all rules of evidence not contained in any Statute, Act or Regulation in force in any part of British India;

(2) all such rules, laws and regulations as have acquired the force of law under the twenty-fifth section of the Indian Councils Act, 1861, in so far as they relate to any matter herein provided for; and

(3) the enactments mentioned in the schedule hereto to the extent specified in the third column of the said schedule.

But nothing herein contained shall be deemed to affect any provision of any Statute, Act or Regulation in force in any part of British India and not hereby expressly repealed.

Interpretation clause.

3. In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:—

"Court."

"Court" includes all Judges and Magistrates, and all persons, except arbitrators, legally authorized to take evidence.

"Fact."

"Fact" means and includes—

(1) any thing, state of things, or relation of things capable of being perceived by the senses;

(2) any mental condition of which any person is conscious.

Illustrations.

(*a*) That there are certain objects arranged in a certain order in a certain place, is a fact.

(*b*) That a man heard or saw something, is a fact.

(*c*) That a man said certain words, is a fact.

(*d*) That a man holds a certain opinion, has a certain intention, acts in good faith, or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.

(*e*) That a man has a certain reputation, is a fact.

"Relevant."

One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

"Facts in issue."

The expression "facts in issue" means and includes—

any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature of extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows.

Explanation.—Whenever, under the provisions of the law for the time being in force relating to Civil Procedure, any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue is a fact in issue.

Illustrations.

A is accused of the murder of B.
At his trial, the following facts may be in issue—
that A caused B's death;
that A intended to cause B's death;
that A had received grave and sudden provocation from B;
that A, at the time of doing the act which caused B's death was, by reason of unsoundness of mind, incapable of knowing its nature.

"Document" means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter. "Document."

Illustrations.

A writing is a document:
Words printed, lithographed or photographed are documents:
A map or plan is a document:
An inscription on a metal plate or stone is a document:
A caricature is a document.

"Evidence" means and includes— "Evidence."

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry:

such statements are called oral evidence;

(2) all documents produced for the inspection of the Court:

such documents are called documentary evidence.

A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. "Proved."

A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist. "Disproved."

"Not proved."

A fact is said not to be proved when it is neither proved nor disproved.

"May presume."

4. Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it:

"Shall presume."

Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved unless and until it is disproved:

"Conclusive proof."

When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

CHAPTER II.

OF THE RELEVANCY OF FACTS.

Evidence may be given of facts in issue and relevant facts.

5. Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others.

Explanation.—This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to Civil Procedure.

Illustrations.

(*a*) A is tried for the murder of B by beating him with a club with the intention of causing his death.

At A's trial the following facts are in issue:—

A's beating B with the club;
A's causing B's death by such beating;
A's intention to cause B's death.

(*b*) A suitor does not bring with him, and have in readiness for production at the first hearing of the case, a bond on which he relies. This section does not enable him to produce the bond or prove its contents at a subsequent stage of the proceedings, otherwise than in accordance with the conditions prescribed by the Code of Civil Procedure.

(Part I.—Relevancy of Facts.—Chapter II—Of the Relevancy of Facts.)

Relevancy of facts forming part of same transaction

6. Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.

Illustrations.

(*a*) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

(*b*) A is accused of waging war against the Queen by taking part in an armed insurrection in which property is destroyed, troops are attacked, and gaols are broken open. The occurrence of these facts is relevant, as forming part of the general transaction, though A may not have been present at all of them.

(*c*) A sues B for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.

(*d*) The question is, whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

Facts which are the occasion, cause or effect of facts in issue.

7. Facts which are the occasion, cause or effect, immediate or otherwise, or relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence of transaction, are relevant.

Illustrations.

(*a*) The question is, whether A robbed B.

The facts that, shortly before the robbery, B went to a fair with money in his possession, and that he showed it or mentioned the fact that he had it, to third persons are relevant.

(*b*) The question is, whether A murdered B.

Marks on the ground, produced by a struggle at or near the place where the murder was committed, are relevant facts.

(*c*) The question is, whether A poisoned B.

The state of B's health before the symptoms ascribed to poison, and habits of B, known to A, which afforded an opportunity for the administration of poison, are relevant facts.

(Part I.—Relevancy of Facts—Chapter II.—Of the Relevancy of Facts.)

Motive, preparation and previous or subsequent conduct.

8. Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person, an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation. 1.—The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2.—When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

Illustrations.

(*a*) A is tried for the murder of B.

The facts that A murdered C, that B knew that A had murdered C, and that B had tried to extort money from A by threatening to make his knowledge public, are relevant.

(*b*) A sues B upon a bond for the payment of money. B denies the making of the bond.

The fact that, at the time when the bond was alleged to be made, B required money for a particular purpose, is relevant.

(*c*) A is tried for the murder of B by poison.

The fact that, before the death of B, A procured poison similar to that which was administered to B, is relevant.

(*d*) The question is whether a certain document is the will of A.

The facts, that not long before the date of the alleged will, A made inquiry into matters to which the provisions of the alleged will relate; that he consulted vakils in reference to making the will, and that he caused drafts of other wills to be prepared, of which he did not approve, are relevant.

(*e*) A is accused of a crime.

The facts that, either before or at the time of, or after the alleged crime, A provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that

he destroyed or concealed evidence, or prevented the presence or procured the absence of persons who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant.

(*f*) The question is, whether A robbed B.

The facts that, after B was robbed, C said in A's presence—"the police are coming to look for the man who robbed B", and that immediately afterwards A ran away, are relevant.

(*g*) The question is, whether A owes B rupees 10,000.

The facts that A asked C to lend him money, and that D said to C in A's presence and hearing—"I advise you not to trust for he owes B 10,000 rupees", and that A went away without making any answer, are relevant facts.

(*h*) The question is, whether A committed a crime.

The facts that A absconded after receiving a letter warning him that inquiry was being made for the criminal, and the contents of the letter, are relevant.

(*i*) A is accused of a crime.

The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.

(*j*) The question is, whether A was ravished.

The fact that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that, without making a complaint, she said that she had been ravished is not relevant as conduct under this section, though it may be relevant—

as a dying declaration under section 32, clause (1), or
as corroborative evidence under section 157.

(*k*) The question is, whether A was robbed.

The fact that, soon after the alleged robbery, he made a complaint relating to the offence, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that he said he had been robbed without making any complaint, is not relevant as conduct under this section, though it may be relevant—

as a dying declaration under section 32, clause (1),
or
as corroborative evidence under section 157.

(Part I.—Relevancy of Facts—Chapter II.—Of the Relevancy of Facts).

Facts necessary to explain or introduce relevant facts.

9. Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

Illustrations.

(*a*) The question is, whether a given document is the will of A.

The stage of A's property and of his family at the date of the alleged will may be relevant facts.

(*b*) A sues B for a libel imputing disgraceful conduct to A; B affirms that the matter alleged to be libellous is true.

The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue.

The particulars of a dispute between A and B about a matter unconnected with the alleged libel are irrelevant, though the fact that there was a dispute may be relevant if it affected the relations between A and B.

(*c*) A is accused of a crime.

The fact that, soon after the commission of the crime, A absconded from his house, is relevant under section 8, as conduct subsequent to and affected by facts in issue.

The fact that at the time when he left home he had sudden and urgent business at the place to which he went, is relevant as tending to explain the fact that he left home suddenly.

The details of the business on which he left are not relevant except in so far as they are necessary to show that the business was sudden and urgent.

(*d*) A sues B for inducing C to break a contract of service made by him with A. C, on leaving A's service, says to A—"I am leaving you because B has made me a better offer." This statement is a relevant fact as explanatory of C's conduct, which is relevant as a fact in issue.

(*e*) A, accused of theft, is seen to give the stolen property to B, who is seen to give it to A's wife. B says as he delivers it—"A says you are to hide this. B's statement is relevant as explanatory of a fact which is part of the transaction.

(*f*) A is tried for a riot and is proved to have marched at the head of a mob. The cries of the mob are relevant as explanatory of the nature of the transaction.

Things said or done by conspirator in reference to common design.

10. Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

Illustration.

Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the Queen.

The facts that B procured arms in Europe for the purpose of the conspiracy, C collected money in Calcutta for a like object, D persuaded persons to join the conspiracy in Bombay, E published writings advocating the object in view at Agra, and F transmitted from Delhi to G at Cabul the money which C had collected at Calcutta, and the contents of a letter written by H giving an account of the conspiracy, are each relevant, both to prove the existence of the conspiracy, and to prove A's complicity in it, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy or after he left it.

When facts not otherwise relevant become relevant.

11. Facts not otherwise relevant are relevant—

(1) if they are inconsistent with any fact in issue or relevant fact;

(2) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.

Illustrations.

(*a*) The question is whether A committed a crime at Calcutta, on a certain day.

The fact that, on that day, A was at Lahore is relevant.

The fact that, near the time when the crime was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.

(*b*) The question is, whether A committed a crime.

The circumstances are such that the crime must have been committed either by A, B, C or D. Every fact which shows that the crime could have been committed by no one else and that it was not committed by either B, C or D, is relevant.

In suits for damages, facts tending to enable Court to determine amount, are relevant.

12. In suits in which damages are claimed, any fact which will enable the court to determine the amount of damages which ought to be awarded, is relevant.

Facts relevant when right or custom is in question.

13. Where the question is as to the existence of any right or custom, the following facts are relevant:—

(*a*) any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted or denied, or which was inconsistent with its existence:

(*b*) Particular instances in which the right or custom was claimed, recognized or exercised or in which its exercise was disputed, asserted or departed from.

Illustration.

The question is whether A has a right to a fishery. A deed conferring the fishery on A's ancestors, a mortgage of the fishery by A's father, a subsequent grant of the fishery by A's father, irreconcilable with the mortgage, particular instances in which A's father exercised the right, or in which the exercise of the right was stopped by A's neighbours, are relevant facts.

Facts showing existence of state of mind, or of body, or bodily feeling.

14. Facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-will or good-will towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant, when the existence of any such state of mind or body or bodily feeling is in issue or relevant.

**Explanation* 1.—A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists, not generally, but in reference to the particular matter in question.

**Explanation* 2.—But where, upon the trial of a person accused of an offence, the previous commission by the accused of an offence is relevant within the meaning of this section, the previous conviction of such person shall also be a relevant fact.

Illustrations.

(*a*) A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article.

The fact that, at the same time, he was in possession of many other stolen articles is relevant, as tending to show that he knew each and all of the articles of which he was in possession to be stolen.

†(*b*) A is accused of fraudulently delivering to another person a counterfeit coin which, at the time when he delivered it, he knew to be counterfeit.

The fact that, at the time of its delivery, A was possessed of a number of other pieces of counterfeit coin is relevant.

The fact that A had been previously convicted of delivering to another person as genuine a counterfeit coin knowing it to be counterfeit is relevant.

(*c*) A sues B for damage done by a dog of B's, which B knew to be ferocious.

The facts that the dog had previously bitten X, Y and Z, and that they had made complaints to B, are relevant.

(*d*) The question is, whether A, the acceptor of a bill of exchange, knew that the name of the payee was fictitious.

The fact that A had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee if the payee had been a real person, is relevant as showing that A knew that the payee was a fictitious person.

(*e*) A is accused of defaming B by publishing an imputation intended to harm the reputation of B.

The fact of previous publications by A respecting B, showing ill-will on the part of A towards B, is relevant, as proving A's

*These *Explanations* were substituted for the original *Explanation* to s. 14 by the Indian Evidence Act (1872) Amendment Act VIII of 1901.

†This *Illustration* was substituted for the original *Illustration* (*b*) to s. 14, by Act VIII of 1901.

intention to harm B's reputation by the particular publication in question.

The facts that there was no previous quarrel between A and B, and that A repeated the matter complained of as he heard it, are relevant, as showing that A did not intend to harm the reputation of B.

(*f*) A is sued by B for fraudulently representing to B that C was solvent, whereby B, being induced to trust C, who was insolvent suffered loss.

The fact that, at the time when A represented C to be solvent, C was supposed to be solvent by his neighbours and by persons dealing with him, is relevant, as showing that A made the representation in good faith.

(*g*) A is sued by B for the price of work done by B, upon a house of which A is owner, by the order of C, a contractor.

A's defence is that B's contract was with C.

The fact that A paid C for the work in question is relevant, as proving that A did, in good faith, make over to C the management of the work in question, so that C was in a position to contract with B on C's own account, and not as agent for A.

(*h*) A is accused of the dishonest misappropriation of property which he had found, and the question is whether, when he appropriated it, he believed in good faith that the real owner could not be found.

The fact that public notice of the loss of the property had been given in the place where A was, is relevant, as showing that A did not in good faith believe that the real owner of the property could not be found.

The fact that A knew, or had reason to believe, that the notice was given fraudulently by C, who had heard of the loss of the property and wished to set up a false claim to it, is relevant, as showing that the fact that A knew of the notice did not disprove A's good faith.

(*i*) A is charged with shooting at B with intent to kill him. In order to show A's intent, the fact of A's having previously shot at B may be proved.

(*j*) A is charged with sending threatening letters to B. Threatening letters previously sent by A to B may be proved, as showing the intention of the letters.

(*k*) The question is, whether A has been guilty of cruelty towards B, his wife.

Expressions of their feeling towards each other shortly before or after the alleged cruelty are relevant facts.

(*l*) The question is, whether A's death was caused by poison.

Statements made by A during his illness as to his symptoms are relevant facts.

(*m*) The question is, what was the state of A's health at the time an assurance on his life was effected.

Statements made by A as to the state of his health at or near the time in question are relevant facts.

(*n*) A sues B for negligence in providing him with a carriage for hire not reasonably fit for use, whereby A was injured.

The fact that B's attention was drawn on other occasions to the defect of that particular carriage is relevant.

The fact that B was habitually negligent about the carriages which he let to hire is irrelevant.

(*o*) A is tried for the murder of B by intentionally shooting him dead.

The fact that A on other occasions shot at B is relevant as showing his intention to shoot B.

The fact that A was in the habit of shooting at people with intent to murder them is irrelevant.

(*p*) A is tried for a crime.

The fact that he said something indicating an intention to commit that particular crime is relevant.

The fact that he said something indicating a general disposition to commit crimes of that class is irrelevant.

Facts bearing on question whether act was accidental or intentional.

15. When there is a question whether an act was accidental or intentional, *[or done with a particular knowledge or intention], the fact that such act formed part of series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

Illustrations.

(a) A is accused of burning down his house in order to obtain money for which it is insured.

The facts that A lived in several houses successively, each of which he insured, in each of which a fire occurred, and after each of which fires A received payment from a different insurance office, are relevant, as tending to show that the fires were not accidental.

(*b*) A is employed to receive money from the debtors of B. It is A's duty to make entries in a book showing the

*These words in s. 15 were inserted by the Indian Evidence Act (1872) Amendment Act VIII of 1901.

amount received by him. He makes an entry showing that on a particular occasion he received less than he really did receive.

The question is, whether this false entry was accidental or intentional.

The facts that other entries made by A in the same book are false, and that the false entry is in each case in favour of A, are relevant.

(*c*) A is accused of fraudulently delivering to B a counterfeit rupee.

The question is, whether the delivery of the rupee was accidental.

The facts that, soon before or soon after the delivery to B, A delivered counterfeit rupees to C, D and E are relevant, as showing that the delivery to B was not accidental.

Existence of course of business when relevant.

16. When there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact.

Illustrations.

(*a*) The question is, whether a particular letter was despatched.

The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that that particular letter was put in that place, are relevant.

(*b*) The question is, whether a particular letter reached A. The facts that it was posted in due course, and was not returned through the Dead Letter Office, are relevant.

ADMISSIONS.

Admission defined.

17. An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances hereinafter mentioned.

Admissions by party to proceeding or his agent;

18. Statements made by a party to the proceeding, or by any agent to any such party, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorized by him to make them, are admissions.

by suitor in representative character;

Statements made by parties to suits suing or sued in a representative character, are not admissions, unless they were made while the party making them held that character.

(Part I.—Relevancy of Facts.—Chapter II.—Of the Relevancy of Facts.)

Statements made by—

(1) persons who have any proprietary or pecuniary interest in the subject-matter of the proceeding, and who makes the statement in their character of persons so interested; or

by party interested in subject-matter;

(2) persons from whom the parties to the suit have derived their interest in the subject-matter of the suit,

by person from whom interest derived.

are admissions, if they are made during the continuance of the interest of the persons making the statements.

19. Statements made by persons whose position or liability it is necessary to prove as against any party to the suit, are admissions, if such statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against them, and if they are made whilst the person making them occupies such position or is subject to such liability.

Admissions by persons whose position must be proved as against party to suit.

Illustration.

A undertakes to collect rents for B.

B sues A for not collecting rent due from C to B.

A denies that rent was due from C to B.

A statement by C that he owed B rent is an admission, and is a relevant fact as against A, if A denies that C did owe rent to B.

20. Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions.

Admissions by persons expressly referred to by party to suit.

Illustration.

The question is whether a horse sold by A to B is sound. A says to B—"Go and ask C; C knows all about it." C's statement is an admission.

21. Admissions are relevant and may be proved as against the person who makes them, or his representative in interest; but they cannot be proved by or on behalf of the person who makes them or by his representative in interest, except in the following cases:—

Proof of admissions against persons making them, and by or on their behalf.

(1) An admission may be proved by or on behalf of the person making it, when it is of such a nature that, if the person making it were dead, it would be relevant as between third persons under section 32.

(2) An admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

(3) An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission.

Illustrations.

(*a*) The question between A and B is, whether a certain deed is or is not forged. A affirms that it is genuine, B that it is forged.

A may prove a statement by B that the deed is genuine, and B may prove a statement by A that the deed is forged, but A cannot prove a statement by himself that the deed is genuine, nor can B prove a statement by himself that the deed is forged.

(*b*) A, the captain of a ship, is tried for casting her away.

Evidence is given to show that the ship was taken out of her proper course.

A produces a book kept by him in the ordinary course of his business showing observations alleged to have been taken by him from day to day, and indicating that the ship was not taken out of her proper course. A may prove these statements, because they would be admissible between third parties, if he were dead, under section 32, clause (2).

(*c*) A is accused of a crime committed by him at Calcutta.

He produces a letter written by himself and dated at Lahore on that day, and bearing the Lahore post-mark of that day.

The statement in the date of the letter is admissible, because, if A were dead, it would be admissible under section 32, clause (2).

(*d*) A is accused of receiving stolen goods knowing them to be stolen.

He offers to prove that he refused to sell them below their value.

A may prove these statements, though they are admissions, because they are explanatory of conduct influenced by facts in issue.

(*e*) A is accused of fraudulently having in his possession counterfeit coin which he knew to be counterfeit.

He offers to prove that he asked a skilful person to examine the coin as he doubted whether it was counterfeit or not, and that that person did examine it and told him it was genuine.

A may prove these facts for the reasons stated in the last preceding *illustration*.

When oral admissions as to contents of documents are relevant.

22. Oral admissions as to the contents of a document are not relevant, unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such documents under the rules hereinafter contained, or unless the genuineness of a document produced is in question.

Admissions in civil cases when relevant.

23. In civil cases no admission is relevant, if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given.

Explanation.—Nothing in this section shall be taken to exempt any barrister, pleader, attorney or vakil from giving evidence of any matter of which he may be compelled to give evidence under section 126.

Confession caused by inducement, threat or promise, when irrelevant in criminal proceedings.

24. A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient in the opinion of the Court to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

Confession to police officer not to be proved.

25. No confession made to a police-officer shall be proved as against a person accused of any offence.

Confession by accused while in custody of police not to be proved against him.

26. No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

**Explanation.*—In this section "Magistrate" does not include the head of a village discharging magisterial functions, unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure.

How much of information received from accused may be proved.

27. Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

Confession made after removal of impression caused by inducement, threat or promise relevant.

28. If such a confession as is referred to in section 24 is made after the impression caused by any such inducement, threat or promise has, in the opinion of the Court, been fully removed, it is relevant.

Confession otherwise relevant not to become irrelevant because of promise of secrecy, etc.

29. If such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him.

Consideration of proved confession affecting person making it and others jointly under trial for some offence.

30. When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

* *Explanation.*—"Offence," as used in this section, includes the abetment of, or attempt to commit, the offence.

Illustrations.

(*a*) A and B are jointly tried for the murder of C. It is proved that A said "B and I murdered C". The Court may consider the effect of this confession as against B.

* This *Explanation* was inserted in s. 30 by the Indian Evidence Act (1872) Amendment Act VIII of 1901.

(*b*) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said—"A and I murdered C."

This statement may not be taken into consideration by the Court against A, as B is not being jointly tried.

31. Admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provisions hereinafter contained. Admissions not conclusive proof but may estop.

STATEMENTS BY PERSONS WHO CANNOT BE CALLED AS WITNESSES.

32. Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases:— Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.

(1) When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. When it relates to cause of death;

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

(2) When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business or in the discharge of professional duty; or of an acknowledgment written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce written or signed by him; or of the date of a letter or other document usually dated, written or signed by him. or is made in course o business.

(3) When the statement is against the pecuniary or proprietary interest of the person making it, or when, if or against interest of maker;

true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages.

or gives opinion as to public right or custom, on matters of general interest;

(4) When a statement gives the opinion of any such person, as to the existence of any public right or custom or matter of public or general interest, of the existence of which, if it existed he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter has arisen.

or relates to existence of relationship;

(5) When the statement relates to the existence of any relationship *(by blood, marriage or adoption) between persons as to whose relationship (by blood, marriage or adoption) the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

or is made in will or deed relating to family affairs;

(6) When the statement relates to the existence of any relationship* (by blood, marriage or adoption) between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

or in document relating to transaction mentioned in section 13, clause (*a*); or is made by several persons and expresses feelings relevant to matter in question.

(7) When the statement is contained in any deed, will or other document which relates to any such transaction as is mentioned in section 13, clause (*a*).

(8) When the statement was made by a number of persons. and expressed feelings or impressions on their part relevant to the matter in question.

Illustrations.

(*a*) The question is, whether A was murdered by B; or A dies of injuries received in a transaction in the course of which she was ravished. The question is whether she was ravished by B; or

The question is, whether A was killed by B under such circumstances that a suit would lie against B by A's widow.

Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape and the actionable wrong under consideration, are relevant facts.

*These words in s. 32, cls. (5) and (6), were inserted by the Indian Evidence Act Amendment Act (18 of 1872), s. 2.

(*b*) The question is as to the date of A's birth.

An entry in the diary of a deceased surgeon regularly kept in the course of business, stating that on a given day he attended A's mother and delivered her of a son, is a relevant fact.

(*c*) The question is, whether A was in Calcutta, on a given day.

A statement in the diary of a deceased solicitor, regularly kept in the course of business, that on a given day the solicitor attended A at a place mentioned, in Calcutta, for the purpose of conferring with him upon specified business, is a relevant fact.

(*d*) The question is, whether a ship sailed from Bombay Harbour on a given day.

A letter written by a deceased member of a merchant's firm by which she was chartered to their correspondents in London, to whom the cargo was consigned, stating that the ship sailed on a given day from Bombay harbour, is a relevant fact.

(*e*) The question is, whether rent was paid to A for certain land.

A letter from A's deceased agent to A saying that he had received the rent on A's account and held it at A's orders, is a relevant fact.

(*f*) The question is, whether A and B were legally married.

The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime, is relevant.

(*g*) The question is, whether A, a person who cannot be found, wrote a letter on a certain day. The fact that a letter written by him is dated on that day is relevant.

(*h*) The question is, what was the cause of the wreck of a ship.

A protest made by the Captain, whose attendance cannot be procured, is a relevant fact.

(*i*) The question is, whether a given road is a public way.

A statement by A, a deceased headman of the village, that the road was public, is a relevant fact.

(*j*) The question is, what was the price of grain on a certain day in a particular market. A statement on the price, made by a deceased banya in the ordinary course of his business, is a relevant fact.

(*k*) The question is, whether A, who is dead, was the father of B.

A statement by A that B was his son, is a relevant fact.

(*l*) The question is, what was the date of the birth of A. A letter from A's deceased father to a friend, announcing the birth of A on a given day, is a relevant fact.

(*m*) The question is, whether, and when, A and B were married.

An entry in a memorandum book by C, the deceased father of B, of his daughter's marriage with A on a given date, is a relevant fact.

(*n*) A sues B for a libel expressed in a painted caricature exposed in a shop window. The question is as to the similarity of the caricature and its libellous character. The remarks of a crowd of spectators on these points may be proved.

Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.

33. Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable:

Provided—

that the proceeding was between the same parties or their representatives in interest;

that the adverse party in the first proceeding had the right and opportunity to cross-examine;

that the questions in issue were substantially the same in the first as in the second proceeding.

Explanation.—A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

STATEMENTS MADE UNDER SPECIAL CIRCUMSTANCES.

Entries in books of account when relevant.

34. Entries in books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

Illustration.

A sues B for Rs. 1,000, and shows entries in his account books showing B to be indebted to him to this amount. The entries are relevant, but are not sufficient, without other evidence, to prove the debt.

Relevancy of entry in public record, made in performance of duty.

35. An entry in any public or other official book, register or record, stating a fact in issue or relevant fact and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoyed by the law of the country in which such book, register or record is kept, is itself a relevant fact.

Relevancy of statements in maps, charts and plans.

36. Statements of facts in issue or relevant facts, made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of Government, as to the matters usually represented or stated in such maps, charts or plans, are themselves relevant facts.

Relevancy of statement as to fact of public nature contained in certain Acts or notifications.

37. When the Court has to form an opinion as to the existence of any fact of a public nature, any statement of it, made in a recital contained in any Act of Parliament, or in any Act of the Governor-General of India in Council, or of the Governors in Council of Madras or Bombay, or of the Lieutenant-Governor in Council of Bengal, or in a notification of the Government appearing in the Gazette of India, or in the Gazette of any Local Government, or in any printed paper purporting to be the London Gazette or the Government Gazette or any colony or possession of the Queen, is a relevant fact.

Relevancy of statements as to any law contained in law books.

38. When the Court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published under the authority of the Government of such country and to contain any such law, and any report of a ruling of the Courts of such country contained in a book purporting to be a report of such rulings, is relevant.

(Part I.—Relevancy of Facts.—Chapter II.—Of the Relevancy of Facts.—

HOW MUCH OF A STATEMENT IS TO BE PROVED.

When evidence is to be given when statement forms part of a conversation, document, book or series of letters or papers.

39. When any statement of which evidence is given forms part of a longer statement, or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, book or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made.

JUDGMENTS OF COURTS OF JUSTICE WHEN RELEVANT.

Previous judgments relevant to bar a second suit or trial.

40. The existence of any judgment, order or decree which by law prevents any Court from taking cognizance of a suit or holding a trial, is relevant fact when the question is whether such Court ought to take cognizance of such suit or to hold such trial.

Relevancy of certain judgments in probate, etc., jurisdiction.

41. A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order or decree is conclusive proof—

that any legal character which it confers accrued at the time when such judgment, order or decree came into operation;

that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, *[order or decree] declares it to have accrued to that person;

that any legal character which it takes away from any such person ceased at the time from which such judgment, *[order or decree] declared that it had ceased or should cease;

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*These words in section 41 wherever they occur were inserted by the Indian Evidence Act Amendment Act [18 of 1872], section 3.

and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment,* [order or decree] declares that it had been or should be his property.

Relevancy and effect of judgments, orders or decrees, other than those mentioned in section 41.

42. Judgments, orders or decrees other than those mentioned in section 41 are relevant if they relate to matters of a public nature relevant to the inquiry; but such judgments, orders or decrees are not conclusive proof of that which they state.

Illustration.

A sues B for trespass on his land. B alleges the existence of a public right of way over the land, which A denies.

The existence of a decree in favour of the defendant, in a suit by A against C for a trespass on the same land, in which C alleged the existence of the same right-of-way, is relevant, but it is not conclusive proof that the right-of-way exists.

Judgments, etc., other than those mentioned in sections 40 to 42, when relevant.

43. Judgments, orders or decrees, other than those mentioned in sections 40, 41 and 42, are irrelevant, unless the existence of such judgment, order or decree is a fact in issue, or is relevant under some other provision of this Act.

Illustrations.

(*a*) A and B separately sue C for a libel which reflects upon each of them. C in each case says that the matter alleged to be libellous is true, and the circumstances are such that it is probably true in each case, or in neither.

A obtains a decree against C for damages on the ground that C failed to make out his jurisdiction. The fact is irrelevant as between B and C.

(*b*) A prosecutes B for adultery with C, A's wife.

B denies that C is A's wife, but the Court convicts B of adultery.

Afterwards, C is prosecuted for bigamy in marrying B during A's lifetime. C says that she never was A's wife.

The judgment against B is irrelevant as against C.

(*c*) A prosecutes B for stealing a cow from him. B is convicted.

* These words in section 41 wherever they occur were inserted by the Indian Evidence Act Amendment Act [18 of 1872], section 3.

A afterwards sues C for the cow, which B had sold to him before his conviction. As between A and C, the judgment against B is irrelevant.

(*d*) A has obtained a decree for the possession of land against B. C, B's son, murders A in consequence.

The existence of the judgment is relevant, as showing motive for a crime.

* (*e*) A is charged with theft and with having been previously convicted of theft. The previous conviction is relevant as a fact in issue.

*(*f*) A is tried for the murder of B. The fact that B prosecuted A for libel and that A was convicted and sentenced is relevant under section 8 as showing the motive for the fact in issue.

Fraud or collusion in obtaining judgment, or incompetency of Court, may be proved.

44. Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under section 40, 41 or 42, and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion.

OPINIONS OF THIRD PERSONS WHEN RELEVANT.

Opinions of experts.

45. When the Court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of handwriting† [or finger impressions], the opinions upon that point of persons specially skilled in such foreign law, science or art, ‡ [or in questions as to identity of handwriting] † [or finger impressions] or relevant facts.

Such persons are called experts.

Illustrations.

(*a*) The question is, whether the death of A was caused by poison.

The opinions of experts as to the symptoms produced by poison by which A is supposed to have died, are relevant.

(*b*) The question is, whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of

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*These *Illustrations* were added to section 43 by the Indian Evidence Act (1872) Amendment Act VIII of 1901.

†The words "or finger impressions," in both places where they occur in s. 45 were added by the Indian Evidence Act (1872) Amendment Act X of 1900.

‡These words in s. 45 were inserted by the Indian Evidence Act Amendment Act (18 of 1872), s. 4.

knowing the nature of the act, or that he was doing what was either wrong or contrary to law.

The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

(*c*) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A.

The opinions of expert on the question whether the two documents were written by the same person or by different persons, are relevant.

Facts bearing upon opinions of experts.

46. Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant.

Illustrations.

(a) The question is, whether A was poisoned by a certain poison.

The fact that other persons, who were poisoned by that poison, exhibited certain symptoms which experts affirm or deny to be the symptoms of that poison, is relevant.

(*b*) The question is, whether an obstruction to a harbour is caused by a certain sea-wall.

The fact that other harbours similarly situated in other respects, but where there were no such sea-walls, began to be obstructed at about the same time, is relevant.

Opinion as to handwriting when relevant.

47. When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

Explanation.—A person is said to be acquainted with the handwriting of another person when he has seen that person write or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person or when in the ordinary course of business,

documents, purporting to be written by that person have been habitually submitted to him.

Illustration.

The question is, whether a given letter is in the handwriting of A, a merchant in London.

B is a merchant in Calcutta, who has written letters addressed to A and received letters purporting to be written by him. C is B's clerk, whose duty it was to examine and file B's correspondence. D is B's broker, to whom B habitually submitted the letters purporting to be written by A for the purpose of advising with him thereon.

The opinions of B, C and D on the question whether the letter is in the handwriting of A are relevant, though neither B, C nor D ever saw A write.

Opinions as to existence of right or custom, when relevant.

48. When the Court has to form an opinion as to the existence of any general custom or right, the opinions as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed are relevant.

Explanation.—The expression "general custom or right" includes customs or rights common to any considerable class of persons.

Illustration.

The right of villagers of a particular village to use the water of a particular well is a general right within the meaning of this section.

Opinions as to usages, tenets, etc., when relevant.

49. When the Court has to form an opinion as to—

the usages and tenets of any body of men or family,

the constitution and government of any religious or charitable foundation, or

the meaning of words or terms used in particular districts or by particular classes of people.

the opinions of persons having special means of knowledge thereon, are relevant facts.

Opinion on relationship, when relevant.

50. When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or

otherwise, has special means of knowledge on the subject, is a relevant fact:

Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, or in prosecutions under section 494, 495, 497 or 498 of the Indian Penal Code.

Illustrations.

(*a*) The question is, whether A and B were married. The fact that they were usually received and treated by their friends as husband and wife, is relevant.

(*b*) The question is, whether A was the legitimate son of B. The fact that A was always treated as such by members of the family, is relevant.

Grounds of opinion, when relevant.

51. Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant.

Illustrations.

An expert may give an account of experiments performed by him for the purpose of forming his opinion.

CHARACTER, WHEN RELEVANT.

In civil cases, character to prove conduct imputed, irrelevant.

52. In civil cases the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him is irrelevant, except in so far as such character appears from facts otherwise relevant.

In criminal cases previous good character relevant.

53. In criminal proceedings, the fact that the person accused is of a good character is relevant.

Previous bad character not relevant, except in reply.

54. In criminal proceedings the fact that the accused person has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.

Explanation I.—This section does not apply to cases in which the bad character of any person is itself a fact in issue.

* This section was substituted for the original section 54 by the Indian Evidence Act (1872) Amendment Act VII of 1901.

Explanation 2.—A previous conviction is relevant as evidence of bad character.

Character as affecting damages.

55. In civil cases the fact that the character of any person is such as to affect the amount of damages which he ought to receive, is relevant.

Explanation.—In sections 52, 53, 54 and 55, the word "character" includes both reputation and disposition; but *[except as provided in section 54] evidence may be given only of general reputation, and general disposition, and not of particular acts by which reputation or disposition were shown.

PART II.

On Proof.

CHAPTER III.

FACTS WHICH NEED NOT BE PROVED.

Fact judicially noticeable need not be proved.

56. No fact of which the Court will take judicial notice need be proved.

Facts of which Court must take judicial notice

57. The Court shall take judicial notice of the following facts:—

(1) all laws or rules having the force of law now or heretofore in force, or hereafter to be in force, in any part of British India:

(2) all public Acts passed or hereafter to be passed by Parliament, and all local and personal Acts directed by Parliament to be judicially noticed:

(3) Articles of War for her Majesty's Army or Navy:

(4) the course of proceeding of Parliament and of the Councils for the purposes of making Laws and

*These words and figures in the *Explanation* to section 55 were inserted by the Indian Evidence Act (1872) Amendment Act VIII of 1901.

Regulations established under the Indian Councils Act, or any other law for the time being relating thereto.

Explanation.—The word "Parliament" in clauses (2) and (4) includes—

(1) the Parliament of the United Kingdom of Great Britain and Ireland;
(2) the Parliament of Great Britain;
(3) the Parliament of England;
(4) the Parliament of Scotland; and
(5) the Parliament of Ireland.

(5) the accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland:

(6) all seals of which English Courts take judicial notice: the seals of all the Courts of British India, and of all Courts out of British India, established by the authority of the Governor-General or any Local Government in Council: the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public, and all seals which any person is authorized to use by any Act of Parliament or other Act or Regulation having the force of law in British India:

(7) the accession to office, names, titles, functions and signatures of the persons filling for the time being any public office in any part of British India, if the fact of their appointment to such office is notified in the Gazette of India or in the official Gazette of any Local Government:

(8) the existence, title and national flag of every State or Sovereign recognized by the British Crown:

(9) the divisions of time, the geographical divisions of the world, and public festivals, fasts and holidays notified in the official Gazette:

(10) the territories under the dominion of the British Crown:

(11) the commencement, continuance and termination of hostilities between the British Crown and any other State or body of persons:

(12) the names of the members and officers of the Court and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates, attorneys, proctors, vakils,

pleaders and other persons authorized by law to appear or act before it:

(13) the rule of the road * [on land or at sea].

In all these cases and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference.

If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

Facts admitted need not be proved.

58. No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, to agree to admit by any writing under their hands, or which by any rule or pleading in force at the time they are deemed to have admitted by their pleadings:

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

CHAPTER IV.

OF ORAL EVIDENCE.

Proof of facts by oral evidence.

59. All facts, except the contents of documents, may be proved by oral evidence.

Oral evidence must be direct.

60. Oral evidence must, in all cases whatever, be direct; that is to say—

if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;

if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;

if it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;

if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds:

* These words in section 57, para 13, were inserted by the Indian Evidence Act Amendment Act (18 of 1872), s. 5.

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatise if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable:

Provided also that, if oral evidence refers to the existence of condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

CHAPTER V.

OF DOCUMENTARY EVIDENCE.

Proof of contents of documents.

61. The contents of documents may be proved either by primary or by secondary evidence.

Primary evidence.

62. Primary evidence means the document itself produced for the inspection of the Court.

Explanation 1.—Where a document is executed in several parts, each part is primary evidence of the document.

Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 2.—Where a number of documents are all made by one uniform process, as in the case of printing, lithography, or photography, each is primary evidence of the contents of the rest; but where they are all copies of a common original, they are not primary evidence of the contents of the original.

Illustration.

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

(Part II.—On Proof.—Chapter V.—Of Documentary Evidence.)

Secondary evidence.

63. Secondary evidence means and includes—

(1) certified copies given under the provisions hereinafter contained;

(2) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies;

(3) copies made from or compared with original;

(4) counterparts of documents as against the parties who did not execute them;

(5) oral accounts of the contents of a document given by some person who has himself seen it.

Illustrations.

(*a*) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.

(*b*) A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.

(*c*) A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence; but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.

(*d*) Neither an oral account of a copy compared with the original, nor an oral account of a photograph or machine-copy of the original, is secondary evidence of the original.

Proof of documents by primary evidence.

64. Documents must be proved by primary evidence except in the cases hereinafter mentioned.

Cases in which secondary evidence relating to documents may be given.

65. Secondary evidence may be given of the existence, condition or contents of a document in the following cases:—

(*a*) when the original is shown or appears to be in the possession or power—

of the person against whom the document is sought to be proved, or

of any person out of reach of, or not subject to, the process of the Court, or

of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it;

(*b*) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(*c*) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(*d*) when the original is of such a nature as not to be easily movable;

(*e*) when the original is a public document within the meaning of section 74;

(*f*) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in British India, to be given in evidence;

(*g*) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (*a*), (*c*) and (*d*) any secondary evidence of the contents of the document is admissible.

In case (*b*), the written admission is admissible.

In case (*e*) or (*f*), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (*g*), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

Rules as to notice to produce.

66. Secondary evidence of the contents of the documents referred to in section 65, clause (*a*), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is *[or to his attorney or pleader,] such notice to produce it as is prescribed by law; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case:

* There words in section 66 were inserted by the Indian Evidence Act (Amendment Act) (18 of 1872), s. 6.

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it:—

(1) when the document to be proved is itself a notice;

(2) when, from the nature of the case, the adverse party must know that he will be required to produce it;

(3) when it appears or is proved that the adverse party has obtained possession of the original by fraud or force;

(4) when the adverse party or his agent has the original in Court;

(5) when the adverse party or his agent has admitted the loss of the document;

(6) when the person in possession of the document is out of reach of, or not subject to, the process of the Court.

Proof of signature and handwriting of person alleged to have signed or written document produced.

67. If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

Proof of execution of document required by law to be attested.

68. If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive and subject to the process of the Court and capable of giving evidence.

Proof where no attesting witness found.

69. If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person excuting the document is in the handwriting of that person.

Admission of execution by party to attested document.

70. The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested.

Proof when attesting witness denies the execution.

71. If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.

(Part II.—On Proof.—Chapter V.—Of Documentary Evidence.)

Proof of document not required by law to be attested.

72. An attested document not required by law to be attested may be proved as if it was unattested.

Comparison of signature, writing or seal with others admitted or proved.

73. In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

*[This section applies also, with any necessary modifications, to finger impressions.]

PUBLIC DOCUMENTS.

Public documents.

74. The following documents are public documents:—

(1) documents forming the acts or records of the acts—

(i) of the sovereign authority,

(ii) of official bodies and tribunals, and

(iii) of public officers, legislative, judicial and executive, whether of British India, or of any other part of Her Majesty's dominions, or of a foreign country;

(2) Public records kept in British India of private documents.

Private documents.

75. All other documents are private.

Certified copies of public documents.

76. Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and

* This paragraph was added to s. 73 by the Indian Evidence Act, 1872, Amending Act X of 1900.

such certificates shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal, and such copies so certified shall be called certified copies.

Explanation.—Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

Proof of documents by production of certified copies.

77. Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

Certified copies of accounts, etc., relating to the affairs of the Palace.

*77A. (1) The provisions of sections 76 and 77 shall be applicable to all accounts and other documents (except such as may be held to fall under the exception provided in section 123A) in the custody of the officer in charge of the Palace Establishments, Mysore, relating to the affairs of the Palace Department.

(2) In giving copies of entries of any books of account, the Officer in charge of the Palace Establishments Mysore, shall, if required by the Judge of a Court in relation to a suit or other proceeding pending before such Court, add a further certificate that the copy contains a true extract of all the entries in the account books of the Palace, and that no other entries are to be found therein, relevant to the matters in issue in such suit or proceeding.

Proof of other official documents.

78. The following public documents may be proved as follows:—

(1) Acts, orders or notifications of the Executive Government of British India in any of its departments, or of any Local Government or any department of any Local Government,—

by the records of the departments, certified by the heads of those departments respectively,

or by any document purporting to be printed by order of any such Government:

(2) The proceedings of the Legislatures,—

by the journals of those bodies respectively, or by

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* This section was inserted after section 77 of the Indian Evidence Act [1 of 1872] by the Act to amend the Indian Evidence Act as in force in Mysore, (Act III of 1912) 1912.

published Acts or abstracts, or by copies purporting to be printed by order of Government:

(3) Proclamations, orders or regulations issued by Her Majesty or by the Privy Council, or by any department of Her Majesty's Government,—

by copies of extracts contained in the London Gazette, or purporting to be printed by the Queen's Printer:

(4) The Acts of the Executive or the proceedings of the Legislature of a foreign country,—

by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some public Act of the Governor-General of India in Council:

(5) The proceedings of a municipal body in British India,—

by a copy of such proceedings, certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body:

(6) Public documents of any other class in a foreign country,—

by the original, or by a copy certified by the legal keeper thereof, with a certificate under the seal of a notary public, or of a British Consul or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.

Presumptions as to Documents.

Presumption as to genuineness of certified copies.

79. The Court shall presume every document purporting to be a certificate, certified copy or other document, which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer in British India, or by any officer in any Native State in alliance with Her Majesty, who is duly authorized thereto by the Governor-General in Council, to be genuine:

Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

The Court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper.

Presumption as to documents produced as record of evidence.

80. Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume—

that the document is genuine; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true; and that such evidence, statement or confession was duly taken.

Presumption as to Gazettes, newspapers, private Acts of Parliament and other documents.

81. The Court shall presume the genuineness of every document purporting to be the London Gazette or the Gazette of India, or the Government Gazette of any Local Government, or of any colony, dependency or possession of the British Crown, or to be a newspaper or journal, or to be a copy of a private Act of Parliament printed by the Queen's Printer, and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody.

Presumption as to document admissible in England without proof of seal or signature

82. When any document is produced before any Court, purporting to be a document which, by the law in force for the time being in England and Ireland, would be admissible in proof of any particular in any Court of Justice in England or Ireland, without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the Court shall presume that such seal, stamp or signature, is genuine and that the person signing it held, at the time when he signed it, the judicial or official character which he claims.

and the document shall be admissible for the same purpose for which it would be admissible in England or Ireland.

(Part II.—On Proof.—Chapter V.—Of Documentary Evidence).

Presumption as to maps or plans made by authority of Government.

83. The Court shall presume that maps or plans purporting to be made by the authority of Government were so made, and are accurate; but maps or plans made for the purposes of any cause must be proved to be accurate.

Presumption as to collections of laws and reports of decisions.

84. The Court shall presume the genuineness of every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country,

and of every book purporting to contain reports of decisions of the Courts of such country.

Presumption as to powers-of-attorney.

85. The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a notary public, or any Court, Judge, Magistrate, British Consul or Vice-Consul, or representative of Her Majesty, or of the Government of India, was so executed and authenticated.

Presumption as to certified copies of foreign judicial records.

86. The Court may presume that any document purporting to be a certified copy of any judicial record of any country not forming part of Her Majesty's dominions is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of Her Majesty or of the Government of India resident in such country to be the manner commonly in use in that country for the certification of copies of judicial records.

Presumption as to books, maps and charts.

87. The Court may presume that any book to which it may refer for information on matters of public or general interest, and that any published map or chart, the statements of which are relevant facts and which is produced for its inspection, was written and published by the person and at the time and place, by whom or at which it purports to have been written or published.

Presumption as to telegraphic messages.

88. The Court may presume that a message, forwarded from a telegraph office to the person to whom such message purports to be addressed, corresponds with a message delivered for transmission at the office form which the message purports to be sent; but the Court shall not make any presumption as to the person by whom such message was delivered for transmission.

Presumption as to due execution, etc., of documents not produced.

89. The Court shall presume that every document, called for and not produced after notice to produce, was attested, stamped and executed in the manner required by law.

Presumption as to documents thirty years old.

90. Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting and in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

Explanation.—Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

This explanation applies also to section 81.

Illustrations.

(*a*) A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land, showing his title to it. The custody is proper.

(*b*) A produces deeds relating to landed property of which he is the mortgagee. The mortgagor is in possession. The custody is proper.

(*c*) A, a connection of B, produces deeds relating to lands in B's possession which were deposited with him by B for safe custody. The custody is proper.

CHAPTER VI.

OF THE EXCLUSION OF ORAL BY DOCUMENTARY EVIDENCE.

Evidence of terms of contracts, grants and other dispositions of property reduced to form of document.

91. When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such

matter except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception 1.—When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2.—Will * [admitted to probate in British India] † [or in the Civil and Military Station, Bangalore or within Mysore] may be proved by the probate.

Explanation 1.—This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document and to cases in which they are contained in more documents than one.

Explanation 2.—Where there are more originals than one, one original only need be proved.

Explanation 3.—The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

Illustrations.

(*a*) If a contract be contained in several letters, all the letters in which it is contained must be proved.

(*b*) If a contract is contained in a bill of exchange, the bill of exchange must be proved.

(*c*) If a bill of exchange is drawn in a set of three, one only need be proved.

(*d*) A contracts, in writing, with B, for the delivery of indigo upon certain terms. The contract mentions the fact that B had paid A the price of other indigo contracted for verbally on another occasion.

Oral evidence is offered that no payment was made for the other indigo. The evidence is admissible.

(*e*) A gives B a receipt for money paid by B.

Oral evidence is offered of the payment.

The evidence is admissible.

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*These words in s. 91, Exception 2, were substituted for the words "under the Indian Succession Act" by the Indian Evidence Act Amendment Act, 1872 (18 of 1872), s. 7.

†These words in s. 91, Exception 2, were added by the Act further to amend the Indian Evidence Act (Act X of 1918).

(Part II—On Proof—Chapter VI.—Of the Exclusion of Oral by Documentary Evidence.)

Exclusion of evidence of oral agreement.

92. When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms.

Proviso (1).—Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, * [want or failure] of consideration, or mistake in fact or law.

Proviso (2).—The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso (3).—The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (4).—The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (5).—Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved:

Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

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* The words "want or failure" were substituted for the words "want of failure" by s. 8 of the Indian Evidence Act Amendment Act, 1872 (18 of 1872).

(Part II.—On Proof.—Chapter VI.—Of the Exclusion of Oral by Documentary Evidence.)

Proviso (6).—Any fact may be proved which shows in what manner the language of a document is related to existing facts.

Illustrations.

(*a*) A policy of insurance is effected on goods "in ships from Calcutta to London." The goods are shipped in a particular ship which is lost. The fact that that particular ship was orally excepted from the policy cannot be proved.

(*b*) A agrees absolutely in writing to pay B Rs. 1,000 on the first March, 1873. The fact that at the same time an oral agreement was made that the money should not be paid till the thirty-first March cannot be proved.

(*c*) An estate called "the Rampore tea estate" is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate and was meant to pass by the deed cannot be proved.

(*d*) A enters into a written contract with B to work certain mines, the property of B, upon certain terms. A was induced to do so by a misrepresentation of B's as to their value. This fact may be proved.

(*e*) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake. A may prove that such a mistake was made as would by law entitle him to have the contract reformed.

(*f*) A orders goods of B by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired.

(*g*) A sells B a horse and verbally warrants him sound. A gives B a paper in these words: "Bought of A a horse for Rs. 500". B may prove the verbal warranty.

(*h*) A hires lodgings of B, and gives B a card on which is written—"Rooms, Rs. 200 a month." A may prove a verbal agreement that these terms were to include partial board.

A hires lodgings of B for a year, and a regularly stamped agreement, drawn up by an attorney, is made between them. It is silent on the subject of board. A may not prove that board was included in the term verbally.

(*i*) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt and does not send the money. In a suit for the amount A may prove this.

(*i*) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it. A may show the circumstances under which it was delivered.

Exclusion of evidence to explain or amend ambiguous document.

93. When the language used in a document is, on its face, ambiguous or defective, evidence may not be given of facts which would show its meaning or supply its defects.

Illustrations.

(*a*) A agrees, in writing, to sell a horse to B for Rs. 1,000 or Rs. 1,500.

Evidence cannot be given to show which price was to be given.

(*b*) A deed contains blanks. Evidence cannot be given of facts which would show how they were meant to be filled.

Exclusion of evidence against application of document to existing facts.

94. When language used in a document is plain in itself, and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.

Illustration.

A sells to B, by deed, "my estate at Rampur containing 100 bighas." A has an estate at Rampur containing 100 bighas. Evidence may not be given of the fact that the estate meant to be sold was one situated at a different place and of a different size.

Evidence as to document unmeaning in reference to existing facts.

95. When language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.

Illustration.

A sells to B, by deed, "my house in Calcutta."

A had no house in Calcutta, but it appears that he had a house at Howrah, of which B had been in possession since the execution of the deed.

These facts may be proved to show that the deed related to the house at Howrah.

Evidence as to application of language which can apply to one only of several persons.

96. When the facts are such that the language used might have been meant to apply to any one, and could not have been meant to apply to more than one, of several persons or things, evidence may be given of facts which show which of those persons or things it was intended to apply to.

(Part II.—On Proof.—Chapter VI.—Of the Exclusion of Oral by Documentary Evidence.)

Illustrations.

(*a*) A agrees to sell to B, for Rs. 1,000, "my white horse". A has two white horses. Evidence may be given of facts which show which of them was meant.

(*b*) A agrees to accompany B to Haidarabad. Evidence may be given of facts showing whether Haidarabad in the Dekkhan or Haidarabad in Sind was meant.

Evidence as to application of language to one of two sets of facts, to neither of which the whole correctly applies.

97. When the language used applies partly to one set of existing facts, and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply.

Illustration.

A agrees to sell to B "my land at X in the occupation of Y". A has land at X, but not in the occupation of Y, and he has land in the occupation of Y, but it is not at X. Evidence may be given of facts showing which he meant to sell.

Evidence as to meaning of illegible characters, etc.

98. Evidence may be given to show the meaning of illegible or not commonly intelligible characters of foreign, obsolete, technical, local and provincial expressions, of abbreviations and words used in a peculiar sense.

Illustration.

A, a sculptor, agrees to sell to B, "all my models." A has both models and modelling tools. Evidence may be given to show which he meant to sell.

Who may give evidence of agreement varying terms of document.

99. Persons who are not parties to a document, or their representatives in interest, may give evidence of any facts tending to show a contemporaneous agreement varying the terms of the document.

Illustration.

A and B make a contract in writing that B shall sell A certain cotton, to be paid for on delivery. At the same time they make an oral agreement that three months' credit shall be given to A. This could not be shown as between A and B, but it might be shown by C, if it affected his interests.

Saving of provisions of Indian Succession Act relating to wills.

100. Nothing in this Chapter contained shall be taken to affect any of the provisions of the Indian Succession Act (X of 1865) as to the construction of wills.

PART III.

Production and Effect of Evidence.

CHAPTER VII.

OF THE BURDEN OF PROOF.

Burden of proof.

101. Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Illustrations.

(*a*) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed.

A must prove that B has committed the crime.

(*b*) A desires a Court to give judgment that he is entitled to certain land in the possession of B, by reason of facts which he asserts, and which B denies, to be true.

A must prove the existence of those facts.

On whom burden of proof lies.

102. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Illustrations.

(*a*) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father.

If no evidence were given on either side, B would be entitled to retain his possession.

Therefore the burden of proof is on A.

(*b*) A sues B for money due on a bond.

The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies.

If no evidence were given on either side, A would succeed as the bond is not disputed and the fraud is not proved.

Therefore the burden of proof is on B.

(Part III.—Production and Effect of Evidence.—Chapter VII.—Of the Burden of Proof.)

Burden of proof as to particular fact.

103. The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Illustration.

A prosecutes B for theft, and wishes the Court to believe that B admitted the theft to C. A must prove the admission.

B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it.

Burden of proving fact to be proved to make evidence admissible.

104. The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

Illustrations.

(*a*) A wishes to prove a dying declaration by B. A must prove B's death.

(*b*) A wishes to prove, by secondary evidence, the contents of a lost document.

A must prove that the document has been lost.

Burden of proving that case of accused comes within exceptions.

105. When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

Illustrations.

(*a*) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act.

The burden of proof is on A.

(*b*) A, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control.

The burden of proof is on A.

(*c*) Section 325 of the Indian Penal Code provides that whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be subject to certain punishments.

A is charged with voluntarily causing grievous hurt under section 325.

The burden of proving the circumstances bringing the case under section 335 lies on A.

Burden of proving fact especially within knowledge.

106. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations.

(*a*) When a person does an act with some intention other than that which the character and circumstances of the act suggest, that burden of proving that intention is upon him.

(*b*) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.

Burden of proving death of person known to have been alive within thirty years.

107. When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

Burden of proving that person is alive who has not been heard of for seven years.

108. *[Provided that when] the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is *[shifted to] the person who affirms it.

Burden of proof as to relationship, in the cases of partners, landlord and tenant, principal and agent.

109. When the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships respectively, is on the person who affirms it.

Burden of proof as to ownership.

110. When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

Proof of good faith in transactions where one party is in relation of active confidence.

111. Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

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* These words in s. 108 were substituted for the original words "when" and "on" respectively, by the Indian Evidence (Amendment) Act (18 of 1872), s. 9.

(Part III.—Production and Effect of Evidence.—Chapter VII.—Of the Burden of Proof.)

Illustrations.

(*a*) The good faith of a sale by a client to an attorney is in question in a suit brought by the client. The burden of proving the good faith of the transaction is on the attorney.

(*b*) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son. The burden of proving the good faith of the transaction is on the father.

Birth during marriage conclusive proof of legitimacy.

112. The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

Proof of cession of territory.

113. A notification in the Gazette of India that any portion of British territory has been ceded to any Native State, Prince or Ruler, shall be conclusive proof that a valid cession of such territory took place at the date mentioned in such notification.

Court may presume existence of certain facts.

114. The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustrations.

The Court may presume—

(*a*) that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession;

(*b*) that an accomplice is unworthy of credit, unless he is corroborated in material particulars;

(*c*) that a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration;

(*d*) that a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or state of things usually cease to exist, is still in existence;

(*e*) that judicial and official acts have been regularly performed;

(*f*) that the common course of business has been followed in particular cases;

(*g*) that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;

(*h*) that, if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given would be unfavourable to him;

(*i*) that when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it:—

as to *illustration* (*a*)—a shop-keeper has in his till a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business:

as to *illustration* (*b*)—A, a person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery. B, a person of equally good character, who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself:

as to *illustration* (*b*)—a crime is committed by several persons. A, B and C, three of the criminals, are captured on the spot and kept apart from each other. Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable:

as to *illustration* (*c*)—A, the drawer of a bill of exchange, was a man of business. B, the acceptor, was a young and ignorant person, completely under A's influence:

as to *illustration* (*d*)—It is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course:

as to *illustration* (*e*)—a judicial act, the regularity of which is in question, was performed under exceptional circumstances:

as to *illustration* (*f*) the question is, whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances:

as to *illustration* (*g*)—a man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feelings and reputation of his family:

as to *illustration* (*h*)—a man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked:

as to *illustration* (*i*)—a bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it.

CHAPTER VIII.

ESTOPPEL.

Estoppel.

115. When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

Illustration.

A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it.

The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title.

Estoppel of tenant;

116. No tenant of immovable property or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title of such immovable property; and no person who came upon any immovable property by the license of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such license was given.

and of license of person in possession.

Estoppel of acceptor of bill of exchange, bailee or licensee.

117. No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it; nor shall any bailee or licensee be permitted to deny that his bailor or licensor had, at the time when the bailment or license commenced, authority to make such bailment or grant such license.

Explanation (1)—The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

Explanation (2)—If a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor.

CHAPTER IX.

Of Witnesses.

Who may testify.

118. All persons shall be competent to testify, unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

Explanation.—A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.

Dumb witnesses.

119. A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court. Evidence so given shall be deemed to be oral evidence.

Parties to civil suit, and their wives or husbands. Husband or wife of person under criminal trial.

120. In all Civil proceedings, the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses. In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness.

Judges and Magistrates.

121. No Judge or Magistrate shall, except upon the special order of some Court to which he is subordinate, be compelled to answer any questions as to his own conduct in Court as such Judge or Magistrate, or as to anything which came to his knowledge in Court as such Judge or Magistrate; but he may be examined as to other matters which occurred in his presence whilst he was so acting.

Illustrations.

(*a*) A, on his trial before the Court of Session, says that a deposition was improperly taken by B, the Magistrate. B

cannot be compelled to answer questions as to this, except upon the special order of a superior Court.

(*b*) A is accused before the Court of Session of having given false evidence before B, a Magistrate. B cannot be asked what A said, except upon the special order of the superior Court.

(*c*) A is accused before the Court of Session of attempting to murder a police officer whilst on his trial before B, a Sessions Judge. B may be examined as to what occurred.

Communications during marriage.

122. No person who is or has been married shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.

Evidence as to affairs of State.

123. No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the Officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

Evidence as to accounts, etc., in the custody of officer in charge of the Palace Establishments.

*123. A. (1) When any party to a suit or other judicial proceeding calls for the production of accounts or other documents in the custody of the Officer in charge of the Palace Establishments, Mysore, or applies to him for certified copies thereof under the provisions of section 76 of this Act, the said officer may, if he considers that it is inexpedient to produce such documents in Court or to give certified copies thereof, by endorsement in writing, refuse to do so.

(2) Whenever the Officer in charge of the Palace Establishments, Mysore, has declined to produce or give certified copies of all the documents required by both parties to a suit or other proceeding, the other documents produced by him or certified copies of other documents of which he has furnished certified copies, shall not be admitted in evidence against any of the parties who object to their being so admitted.

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* This section was inserted after section 123 of the Indian Evidence Act, 1872, by section 2 of the Act to amend the Indian Evidence Act, as in force in Mysore (Act III of 1912), 1912.

(*Part III.—Production and Effect of Evidence.—Chapter IX.—Of Witnesses.*)

(3) The provisions of sub-section (1) of this section shall not apply to a suit or other proceeding to which the Officer in charge of the Palace Establishments, Mysore, is, in his official capacity, himself a party.

Official communications.

124. No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.

Information as to commission of offences.

*__125.__ No Magistrate or police officer shall be compelled to say whence he got any information as to the commission of any offence, and no Revenue Officer shall be compelled to say whence he got any information as to the commission of any offence against the public revenues.

Explanation.—"Revenue-Officer" in this section means any officer employed in or about the business of any branch of the public revenue.

Professional communication.

126. No barrister, attorney, pleader or vakil shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment:

Provided that nothing in this section shall protect from disclosure—

(1) any such communication made in furtherance of any† [illegal] purpose:

(2) any fact observed by any barrister, pleader, attorney and vakil, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

It is immaterial whether the attention of such barrister, ‡[pleader], attorney or vakil was or was not directed to such fact by or on behalf of his client.

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* This section was substituted for the original s. 125 by the Indian Evidence Act, 1872, Amendment Act, VIII of 1901.

† This word in s. 126 was substituted for the original word "criminal" by the Indian Evidence (Amendment) Act 18 of 1872, s. 10.

‡ This word in s. 126 was inserted by the Indian Evidence (Amendment) Act, 18 of 1872, s. 10.

(Part III.—Production and Effect of Evidence.—Chapter X.—Of the Examination of Witnesses.)

CHAPTER X.

Of the Examination of Witnesses.

Order of production and examination of witnesses.

135. The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court.

Judge to decide as to admissibility of evidence.

136. When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant and not otherwise.

If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last-mentioned fact must be proved before evidence is given of the fact first-mentioned, unless the party undertakes to give proof of such fact, and the Court is satisfied with such undertaking.

If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

Illustrations.

(*a*) It is proposed to prove a statement about a relevant fact by a person alleged to be dead, which statement is relevant under section 32.

The fact that the person is dead must be proved by the person proposing to prove the statement, before evidence is given of the statement.

(*b*) It is proposed to prove, by a copy, the contents of a document said to be lost.

The fact that the original is lost must be proved by the person proposing to produce the copy, before the copy is produced.

(*c*) A is accused of receiving stolen property knowing it to have been stolen.

It is proposed to prove that he denied the possession of the property.

The relevancy of the denial depends on the identity of the property. The Court may, in its discretion, either require the property to be identified before the denial of the possession is proved, or permit the denial of possession to be proved before the property is identified.

(*d*) It is proposed to prove a fact (A) which is said to have been the cause or effect of a fact in issue. There are several intermediate facts (B, C and D) which must be shown to exist before the fact (A) can be regarded as the cause or effect of the fact in issue. The Court may either permit A to be proved before B, C and D before permitting proof of A.

Examination-in-chief.

137. The examination of a witness by the party who calls him shall be called his examination-in-chief.

Cross-examination.

The examination of a witness by the adverse party shall be called his cross-examination.

Re-examination.

The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination.

Order of examinations.

138. Witnesses shall be first examined-in-chief then (if the adverse party so desires) cross examined, then (if the party calling him so desires) re-examined.

The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

Direction of re-examination.

The re-examination shall be directed to the explanation of matters referred to in cross-examination; and if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

Cross-examination of person called to produce a document.

139. A person summoned to produce a document does not become a witness by the mere fact that he produces it and cannot be cross-examined unless and until he is called as a witness.

Witnesses to character.

140. Witnesses to character may be cross-examined and re-examined.

Leading questions.

141. Any question suggesting the answer which the person putting it wishes or expects to receive is called a leading question.

(Part III.—Production and Effect of Evidence—Chapter X.—Of the Examination of Witnesses.)

When they must not be asked.

142. Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief, or in a re-examination, except with the permission of the Court.

The Court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.

When they may be asked.

143. Leading questions may be asked in cross-examination.

Evidence as to matters in writing.

144. Any witness may be asked, whilst under examination, whether any contract, grant or other disposition of property, as to which he is giving evidence, was not contained in a document, and if he says that it was, or if he is about to make any statement as to the contents of any document, which, in the opinion of the Court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitled the party who called the witness to give secondary evidence of it.

Explanation.—A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts.

Illustration.

The question is, whether A assaulted B.

C deposes that he heard A say to D—"B wrote a letter accusing me of theft, and I will be revenged on him." This statement is relevant, as showing A's motive for the assault, and evidence may be given of it, though no other evidence is given about the letter.

Cross-examinations as to previous statements in writing.

145. A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

Questions lawful in cross-examination.

146. When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend—

(1) to test his veracity.

(2) to discover who he is and what is his position in life, or

(3) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.

When witness to be compelled to answer.

147. If any such question relates to a matter relevant to the suit or proceeding, the provisions of section 132 shall apply thereto.

Court to decide when question shall be asked and when witness compelled to answer.

148. If any such question relates to a matter not relevant to the suit or proceeding, except in so far as it affects the credit of the witness by injuring his character, the Court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it. In exercising its discretion, the Court shall have regard to the following considerations :—

(1) such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies :

(2) such questions are improper if the imputation which shey convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the Court as to the credibility of the witness on the matter to which he testifies :

(3) such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence :

(4) the Court may, if it sees fit, draw, from the witness's refusal to answer, the inference that the answer if given would be unfavourable.

Question not to be asked without reasonable grounds.

149. No such question as is referred to in section 148 ought to be asked, unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well-founded.

(Part III.—Production and Effect of Evidence.—Chapter X.—Of the Examination of Witnesses.)

Illustrations.

(*a*) A barrister is instructed by an attorney or vakil that an important witness is a dakait. This is a reasonable ground for asking the witness whether he is a dakait.

(*b*) A pleader is informed by a person in Court that an important witness is a dakait; the informant, on being questioned by the pleader, gives satisfactory reasons for his statement. This is a reasonable ground for asking the witness whether he is a dakait.

(*c*) A witness, of whom nothing whatever is known, is asked at random whether he is a dakait. There are here no reasonable grounds for the question.

(*d*) A witness, of whom nothing whatever is known, being questioned as to his mode of life and means of living, gives unsatisfactory answers. This may be a reasonable ground for asking him if he is a dakait.

Procedure of Court in case of question being asked without reasonable grounds.

150. If the Court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any barrister, pleader, vakil or attorney, report the circumstances of the case to the High Court or other authority to which such barrister, pleader, vakil or attorney is subject in the exercise of his profession.

Indecent and scandalous questions.

151. The Court may forbid any question or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the Court unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

Questions intended to insult or annoy.

152. The Court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the Court needlessly offensive in form.

Exclusion of evidence to contradict answers to questions testing veracity.

153. When a witness has been asked and has answered any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him: but, if he answers falsely, he may afterwards be charged with giving false evidence.

Exception 1.—If a witness is asked whether he has been previously convicted of any crime and denies it, evidence may be given of his previous conviction.

Exception 2.—If a witness is asked any question tending to impeach his impartiality and answers it by denying the facts suggested, he may be contradicted.

Illustrations.

(*a*) A claim against an underwriter is resisted on the ground of fraud.

The claimant is asked whether, in a former transaction, he has not made a fraudulent claim. He denies it.

Evidence is offered to show that he did make such a claim.

The evidence is inadmissible.

(*b*) A witness is asked whether he was not dismissed from a situation for dishonesty. He denies it.

Evidence is offered to show that he was dismissed for dishonesty.

The evidence is not admissible.

(*c*) A affirms that on a certion day he saw B at Lahore.

A is asked whether he himself was not on that day at Calcutta. He denies it.

Evidence is offered to show that A was on that day at Calcutta.

The evidence is admissible, not as contradicting A on a fact which affects his credit, but as contradicting the alleged fact that B was seen on the day in question in Lahore.

In each of these cases the witness might, if his denial was false, be charged with giving false evidence.

(*d*) A is asked whether his family has not had a blood-feud with the family of B against whom he gives evidence.

He denies it. He may be contradicted on the ground that the question tends to impeach his impartiality.

Question by party to his own witness.

154. The Court may, in its discretion, permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party.

Impeaching credit of witness.

155. The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him:—

(1) by the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;

(2) by proof that the witness has been bribed or has accepted* the offer of a bribe, or has received any other corrupt inducement to give his evidence;

(3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;

(4) when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.

Explanation.—A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

Illustrations.

(*a*) A sues B for the price of goods sold and delivered to B. C says that A delivered the goods to B.

Evidence is offered to show that, on a previous occasion, he said that he had not delivered the goods to B.

The evidence is admissible.

(*b*) A is indicted for the murder of B.

C says that B, when dying, declared that A had given B the wound of which he died.

Evidence is offered to show that, on a previous occasion, C said that the wound was not given by A or in his presence.

The evidence is admissible.

Questions tending to corroborate evidence of relevant fact, admissible.

156. When a witness whom it is intended to corroborate gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred, if the Court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies.

Illustration.

A, an accomplice, gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed.

*This word "accepted" in s. 155, para. [2], was substituted for the original word "had" by the Indian Evidence (Amendment) Act [18 of 1872], s. 11.

Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

Former statements of witness may be proved to corroborate later testimony as to same fact.

157. In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact may be proved.

What matters may be proved in connection with proved statement relevant under section 32 or 33.

158. Whenever any statement, relevant under section 32 or 33, is proved, all matters may be proved either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness and had denied upon cross-examination the truth of the matters suggested.

Refreshing memory.

159. A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at the time fresh in his memory.

When witness may use copy of document to refresh memory.

The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it he knew it to be correct.

Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of such document:

Provided the Court be satisfied that there is sufficient reason for the non-production of the original.

An expert may refresh his memory by reference to professional treatises.

Testimony to facts stated in document mentioned in section 169.

160. A witness may also testify to facts mentioned in any such document as is mentioned in section 159, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

Illustration.

A book-keeper may testify to facts recorded by him in books regularly kept in the course of business, if he knows that the books were correctly kept, although he has forgotten the particular transactions entered.

(Part III.—Production and Effect of Evidence.—Chapter X.—Of the Examination of Witnesses.)

Right of adverse party as to writing used to refresh memory.

161. Any writing referred to under the provisions of the two last preceding sections must be produced and shown to the adverse party if he requires it: such party may, if he pleases, cross-examine the witness thereupon.

Production of documents.

162. A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or its admissibility. The validity of any such objection shall be decided on by the Court.

The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

Translation of documents.

If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence: and, if the interpreter disobeys such direction, he shall be held to have committed an offence under section 166 of the Indian Penal Code.

Giving, as evidence, of document called for and produced on notice.

163. When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so.

Using, as evidence of document production of which was refused on notice.

164. When a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence without the consent of the other party or the order of the Court.

Illustrations.

A sues B on an agreement and gives B notice to produce it. At the trial A calls for the document and B refuses to produce it. A gives secondary evidence of its contents. B seeks to produce the document itself to contradict the secondary evidence given by A, or in order to show that the agreement is not stamped. He cannot do so.

Judge's power to put questions or order production.

165. The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the

parties nor their agents shall be entitled to make any objection to any such question or order, nor without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question :

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved.

Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

Power of jury or assessors to put questions.

166. In cases tried by jury or with assessors, the jury or assessors may put any questions to the witnesses, through or by leave of the Judge, which the Judge himself might put and which he considers proper.

CHAPTER XI.

Of Improper Admission and Rejection of Evidence.

No new trial for improper admission or rejection of evidence.

167. The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

(*Schedule.—Enactments repealed.*)

SCHEDULE.

ENACTMENTS REPEALED.

(*See section 2*)

Number and year	Title	Extent of repeal
Stat. 26 Geo. III, Chap. 57.	For the further regulation of the trial of persons accused of certain offences committed in the East Indies; for repealing so much of an Act, made in the twenty-fourth year of the reign of his present Majesty entitled "(An Act for the better regulation and management of the affairs of the East India Company and of the British possessions in India, and for establishing a Court of Judicature for the more speedy and effectual trial of persons accused of offences committed in the East Indies)," as requires the servants of the East India Company to deliver inventories of their estates and effects; for rendering the laws more effectual against persons unlawfully resorting to the East Indies; and for the more easy proof, in certain cases, of deeds and writings executed in Great Britain or India.	Section 38 so far as it relates to Courts of Justice in the East Indies.
Stat. 14 & 15 Vict. Chap. 99.	To amend the Law of Evidence ...	Section 11 and so much of section 19 as relates to British India.
Act XV of 1852	To amend the Law of Evidence ...	So much as has not been heretofore repealed.
Act XIX of 1853	To amend the Law of Evidence in the Civil Courts of the East India Company in the Bengal Presidency.	Section 19.
Act II of 1855	For the further improvement of the Law of Evidence.	So much as has not been heretofore repealed.
Act XXV of 1861	For simplifying the procedure of the Courts of Ctiminal Judicature not established by Royal Charter.	Section 237.
I*	* * * *	*

* The entry relating to the General Clauses Act, 1868 (I of 1868), was repealed by the General Clauses Act III of 1899.

ACT IX OF 1872.

Notification by the Government of India, Foreign Department, Judicial, No. 47 J., dated Simla, the 27th May 1878.

The Governor-General in Council is pleased to direct that the following Acts* subject to the undermentioned modifications, shall become law in the Territories of Mysore from the 1st June 1878 :—

Act IX of 1872 (The Indian Contract Act), except the Explanation appended to section 265. The word "Court" in this section shall be taken to mean "a Court not inferior to the Court of the Judicial Assistant Commissioner."†

Act I of 1877‡ (The Specific Relief Act) except Chapter VIII.

* So much of this Notification as extended Act X of 1877 (The Code of Civil Procedure) to Mysore was cancelled by Act II of 1884, s. 52.

† But see Act VI of 1892, which substitutes a new section for s. 265.

‡ For Act I of 1827, *vide infra*.

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ACT IX OF 1872.

RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL ON THE 25TH APRIL 1872.

The Indian Contract Act, 1872.

WHEREAS it is expedient to define and amend certain parts of the law relating to contracts; It is hereby enacted as follows:— Preamble.

PRELIMINARY.

1. This Act may be called the Indian Contract Act, 1872. Short title.

It extends to the whole of British India, and it shall come into force on the first day of September 1872. Extent and Commencement.

The enactments mentioned in the schedule hereto are repealed to the extent specified in the third column thereof; but nothing herein contained shall effect the provisions of any Statue, Act or Regulation not hereby expressly repealed, nor any usage or custom of trade, nor any incident of any contract, not inconsistent with the provisions of this Act. Enactments repealed.

2. In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:— Interpretation-clause.

(*a*) When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal.

(9) When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise:—

(*c*) The person making the proposal is called the "promisor," and the person accepting the proposal is called the "promisee":

(*d*) When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise:

Sections 3-4.

(*e*) Every promise and every set of promises, forming the consideration for each other, is an agreement:

(*f*) Promises which form the consideration or part of the consideration for each other are called reciprocal promises:

(*g*) An agreement not enforceable by law is said to be void:

(*h*) An agreement enforceable by law is a contract:

(*i*) An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract:

(*j*) A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

CHAPTER I.

OF THE COMMUNICATION, ACCEPTANCE AND REVOCATION OF PROPOSALS.

Communication, acceptance and revocation of proposals.

3. The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances respectively, are deemed to be made by any act or omission of the party proposing, accepting or revoking, by which he intends to communicate such proposal, acceptance or revocation, or which has the effect of communicating it.

Communication when complete.

4. The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

The communication of an acceptance is complete,—

as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor;

as against the acceptor, when it comes to the knowledge of the proposer.

The communication of a revocation is complete,—

as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it;

as against the person to whom it is made, when it comes to his knowledge.

Sections 5-7.

Illustrations.

(*a*) A proposes, by letter, to sell a house to B at a certain price.

The communication of the proposal is complete when B receives the letter.

(*b*) B accepts A's proposal by a letter sent by post.

The communication of the acceptance is complete.

as against A, when the letter is posted;

as against B, when the letter is received by A.

(*c*) A revokes his proposal by telegram.

The revocation is complete as against A when the telegram is despatched. It is complete as against B when B receives it.

B revokes his acceptance by telegram. B's revocation is complete as against B when the telegram is despatched, and as against A when it reaches him.

Revocation of proposals and acceptances.

5. A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

Illustrations.

A proposes, by a letter sent by post to sell his house to B. B accepts the proposal by a letter sent by post.

A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards.

B may revoke his acceptance at any time before or at the moment when the letter communicating it reaches A, but not afterwards.

Revocation how made.

6. A proposal is revoked—

(1) by the communication of notice of revocation by the proposer to the other party;

(2) by the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance;

(3) by the failure of the acceptor to fulfil a condition precedent to acceptance; or

(4) by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

Acceptance must be absolute.

7. In order to convert a proposal into a promise the acceptance must—

(1) be absolute and unqualified;

(2) be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal

prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but, if he fails to do so, he accepts the acceptance.

Acceptance by performing conditions, or receiving consideration.

8. Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.

Promises, express and implied.

9. In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

CHAPTER II.

OF CONTRACTS, VOIDABLE CONTRACTS AND VOID AGREEMENTS.

What agreements are contracts.

10. All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

Nothing herein contained shall affect any law in force in British India, and not hereby expressly repealed, by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents.

Who are competent to contract.

11. Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.

What is a sound mind for the purposes of contracting.

12. A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.

A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

Sections 13-16.

Illustration.

(*a*) A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.

(*b*) A sane man who is delirious from fever, or who is so drunk that he cannot understand the terms of a contract, or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.

"Consent" defined.

13. Two or more persons are said to consent when they agree upon the same thing in the same sense.

"Free consent" defined.

14. Consent is said to be free when it is not caused by —

(1) coercion, as defined in section 15, or
(2) undue influence, as defined in section 16, or
(3) fraud, as defined in section 17, or
(4) misrepresentation, as defined in section 18, or
(5) mistake subject to the provisions of sections 20, 21 and 22

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake.

"Coercion" defined.

15. "Coercion" is the committing, or threatening to commit, any act forbidden by the Indian Penal Code, or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

Explanation.—It is immaterial whether the Indian Penal Code is or is not in force in the place where the coercion is employed.

Illustration.

A, on board an English ship on the high seas, causes B to enter into an agreement by an act amounting to criminal intimidation under the Indian Penal Code.

A afterwards sues B for breach of contract at Calcutta.

A has employed coercion, although his act is not an offence by the law of England, and although section 506 of the Indian Penal Code was not in force at the time when or place where the act was done.

"Undue influence" defined.

*16. (1) A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

* This section was substituted for the original by Section 2, Act IV of 1912.

Section 17.

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—

(*a*) Where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or

(*b*) Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Nothing in the sub-section shall affect the provisions of section 111 of the Indian Evidence Act, 1872, as applied to Mysore.

Illustrations.

(*a*) A, having advanced money to his son, B, during his minority, upon B's coming of age obtains by misuse of parental influence, a bond from B for a greater amount than the sum due in respect of the advance. A employs undue influence.

(*b*) A, a man enfeebled by disease or age, is induced, by B's influence over him as his medical attendant, to agree to pay B an unreasonable sum for his professional services. B employs undue influence.

(*c*) A being in debt to B, the money-lender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on B to prove that the contract was not induced by undue influence.

(*d*) A applies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence.

"Fraud" defined.

17. "Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract—

(1) the suggestion, as to a fact, of that which is not true by one who does not believe it to be true;

Sections 18-19.

(2) the active concealment of a fact by one having knowledge or belief of the fact;

(3) a promise made without any intention of performing it;

(4) any other act fitted to deceive;

(5) any such act or omission as the law specially declares to be fraudulent.

Explanation.—Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

Illustrations.

(*a*) A sells, by auction, to B a horse which A knows to be unsound. A says nothing to B about the horse's unsoundness. This is not fraud in A.

(*b*) B is A's daughter and has just come of age. Here, the relation between the parties would make it A's duty to tell B if the horse is unsound.

(*c*) B says to A—"If you do not deny it, I shall assume that the horse is sound." A says nothing. Here, A's silence is equivalent to speech.

(*d*) A and B, being traders enter upon a contract. A has private information of a change in prices in which would affect B's willingness to proceed with the contract. A is not bound to inform B.

18. "Misrepresentation" means and includes— "Misrepresentation" defined.

(1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true:

(2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him;

(3) causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

19. When consent to an agreement is caused by coercion, [a] fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused. Voidability of agreements without free consent.

A party to a contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be

Section 19-A.

put in the position in which he would have been if the representation made had been true.

Exception.—If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

Explanation.—A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable.

Illustrations.

(*a*) A, intending to deceive B, falsely represents that five hundred maunds of indigo are made annually at A's factory, and thereby induces B to buy the factory. The contract is voidable at the option of B.

(*b*) A, by a misrepresentation, leads B erroneously to believe that five hundred maunds of indigo are made annually at A's factory. B examines the accounts of the factory, which show that only four hundred maunds of indigo have been made. After this B buys the factory. The contract is not voidable on account of A's misrepresentation.

(*c*) A, fraudulently informs B that A's estate is free from encumbrance. B thereupon buys the estate. The estate is subject to a mortgage. B may either avoid the contract, or may insist on its being carried out and the mortgage-debt redeemed.

(*d*) B, having discovered a vein of ore on the estate of A, adopts means to conceal, and does conceal, the existence of the ore from A. Through A's ignorance B is enabled to buy the estate at an undervalue. The contract is voidable at the option of A.

(*e*) A is entitled to succeed to an estate at the death of B; B dies; C, having received intelligence of B's death, prevents the intelligence reaching A, and thus induces A to sell him his interest in the estate. The sale is voidable at the option of A.

Power to set aside contract induced by undue influence.

*19-A. When consent to an agreement is caused by (a) undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused.

Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just.

Illustrations.

(*a*) A's son has forged B's name to a promissory note. B, under threat of prosecuting A's son, obtains a bond from A for the amount of that forged note. If B sues on this bond, the Court may set the bond aside.

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*This section was inserted by Section 3 of Act IV of 1912.

(a) Here the words undue (influence) were repealed by section 3 of Act IV of 1912.

Sections 20-23.

(*b*) A, a money-lender, advances Rs. 100 to B an agriculturist, and, by undue influence, induces B to execute a bond for Rs. 200 with interest at 6 per cent per month. The Court may set the bond aside, ordering B to repay the Rs. 100 with such interest as may seem just.

Agreement void where both parties are under mistake as to matter of fact.

20. Where both parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

Explanation.—An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement is not to be deemed a mistake as to a matter of fact.

Illustrations.

(*a*) A agrees to sell to B a specific cargo of goods supposed to be on its way from England to Bombay. It turns out that, before the day of the bargain, the ship conveying the cargo had been cast away and the goods lost. Neither party was aware of the facts. The agreement is void.

(*b*) A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact. The agreement is void.

(*c*) A, being entitled to an estate for the life of B, agrees to sell it to C. B was dead at the time of the agreement, but both parties were ignorant of the fact. The agreement is void.

Effect of mistake as to law.

21. A contract is not voidable because it was caused by a mistake as to any law in force in British India; but a mistake as to a law not in force in British India has the same effect as a mistake of fact.

Illustrations.

A and B make a contract grounded on the erroneous belief that a particular debt is barred by the Indian Law of Limitation: the contract is not voidable.

A and B make a contract grounded on an erroneous belief as to the law regulating bills of exchange in France: the contract is voidable.

Contract caused by mistake of one party as to matter of fact.

22. A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact.

What considerations and objects are lawful and what not.

23. The consideration or object of an agreement is lawful, unless—

it is forbidden by law; or

is of such a nature that, if permitted, it would defeat provisions of any law; or

is fraudulent; or

involves or implies injury to the person or property of another; or

Section 23.

the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

Illustrations.

(*a*) A agrees to sell his house to B for 10,000 rupees. Here, B's promise to pay the sum of 10,000 rupees is the consideration for A's promise to sell the house, and A's promise to sell the house is the consideration for B's promise to pay the 10,000 rupees. These are lawful considerations.

(*b*) A promises to pay B 1,000 rupees at the end of six months, if C, who owes that sum to B, fails to pay it. B promises to grant time to C accordingly. Here the promise of each party is the consideration for the promise of the other party, and they are lawful considerations.

(*c*) A promises, for a certain sum paid to him by B, to make good to B the value of his ship if it is wrecked on a certain voyage. Here A's promise is the consideration for B's payment, and B's payment is the consideration for A's promise, and these are lawful considerations.

(*d*) A promises to maintain B's child, and B promises to A 1,000 rupees yearly for the purpose. Here the promise of each party is the consideration for the promise of the other party. They are lawful considerations.

(*e*) A, B and C enter into an agreement for the division among them of gains acquired, or to be acquired, by them by fraud. The agreement is void, as its object is unlawful.

(*f*) A promises to obtain for B an employment in the public service, and B promises to pay 1,000 rupees to A. The agreement is void, as the consideration for it is unlawful.

(*g*) A, being agent for a landed proprietor, agrees for money, without the knowledge of his principal, to obtain for B a lease of land belonging to his principal. The agreement A and B is void, as it implies A fraud by concealment by A, on his principal.

(*h*) A promises B to drop a prosecution which he has instituted against B for robbery, B promises to restore the value of the things taken. The agreement is void, as its object is unlawful.

(*i*) A's estate is sold for arrears of revenue under the provisions of an Act of the Legislature, by which the defaulter is prohibited from purchasing the estate. B, upon an understanding with A, becomes the purchaser, and agrees to convey the estate to A, upon receiving from him the price which B has paid. The agreement is void, as it renders the transaction, in effect, a purchase by the defaulter, and would so defeat the object of the law.

(*j*) A, who is B's mukhtar, promises to exercise his influence, as such, with B in favour of C, and promises to pay 1,000 rupees to A. The agreement is void, because it is immoral.

(*k*) A agrees to let her daughter to hire B for concubinage. The agreement is void, because it is immoral, though the letting may not be punishable under Indian Penal Code.

Sections 24-25.

Void Agreements.

24. If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void.

Agreements void, if considerations and objects unlawful in part.

Illustrations.

A promises to superintend, on behalf of B, a legal manufacture of indigo, and an illegal traffic in other articles. B promises to pay to A a salary of 10,000 rupees a year. The agreement is void, the object of A's promise, and the consideration for B's promise, being in part unlawful.

25. An agreement made without consideration is void, unless—

Agreement without consideration, void, unless it is in writing and registered;

(1) it is expressed in writing and registered under the law for the time being in force for the registration of [documents] [a] and is made on account of natural love and affection between parties standing in a near relation to each other; or unless

or is a promise to compensate for something done;

(2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or unless

or is a promise to pay a debt barred by limitation law.

(3) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

In any of these cases such an agreement is a contract.

Explanation 1.—Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.

Explanation 2.—An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was given.

[a] This word was substituted for the original word 'assurances' by section 4 Act IV of 1912.

Sections 26-28.

Illustrations.

(*a*) A promises, for no consideration, to give to A Rs. 1,000. This is a void agreement.

(*b*) A, for natural love and affection, promises to give his son, B, Rs. 1,000. A puts his promises to B into writing and registers it. This is a contract.

(*c*) A finds B's purse and gives it to him. B promises to give A Rs. 50. This is a contract.

(*d*) A supports B's infant son. B promises to pay A's expenses in so doing. This is a contract.

(*e*) A owes B Rs. 1,000, but the debt is barred by the Limitation Act. A signs a written promise to pay B Rs. 500 on account of the debt. This is a contract.

(*f*) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A's consent to the agreement was freely given. The agreement is a contract notwithstanding the inadequacy of the consideration.

(*g*) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A denies that his consent to the agreement was freely given.

The inadequacy of the consideration is a fact which the Court shall take into account in considering whether or not A's consent was freely given.

Agreement in restraint of marriage void.

26. Every agreement in restraint of the marriage of any person, other than a minor, is void.

Agreement in restraint of trade void.

27. Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.

Savings of agreement not to carry on business of which good-will is sold;

Exception 1.—One who sells the good-will of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the good-will from him, carries on a like business therein: Provided that such limits appear to the Court reasonable, regard being had to the nature of the business.

[ ]

Agreements in restraint of legal proceedings void.

28. Every agreement, by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent.

Saving of contract to refer to arbitration dispute that may arise.

Exception 1.—This section shall not render illegal a contract by which two or more persons agree that any dispute which may arise between them in respect that any subject or class of subjects shall be referred to arbitration, and

[ ] Exceptions 2 and 3 were repealed by Section 73 of Act VI of 1936

that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred. [a]

Exception 2.—Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration. Saving of contract to refer questions that have already arisen.

29. Agreements, the meaning of which is not certain, or capable of being made certain, are void. Agreements void for uncertainty.

Illustrations.

(*a*) A agrees to sell to B "a hundred tons of oil". There is nothing whatever to show what kind of oil was intended. The agreements is void for uncertainty.

(*b*) A agrees to sell to B one hundred tons of oil of a specified description, known as an article of commerce. There is no uncertainty here to make the agreement void.

(*c*) A, who is a dealer in cocoanut-oil only, agrees to sell to B "one hundred tons of oil". The nature of A's trade affords an indication of the meaning of the words, and A has entered into a contract for the sale of one hundred tons of cocoanut-oil.

(*d*) A agrees to sell to B "all the grain in my granary at Ramnagar." There is no uncertainty here to make the agreement void.

(*e*) A agrees to sell to B "one thousand maunds of rice at a price to be fixed by C". As the price is capable of being made certain, there is no uncertainty here to make the agreement void.

(*f*) A agrees to sell to B "my white horse for rupees five hundred or rupees one thousand". There is nothing to show which of the two prices was to be given. The agreement is void.

30. Agreements by way of wager are void; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made. Agreements by way of wager void.

This section shall not be deemed to render unlawful a subscription or contribution, or agreement to subscribe or contribute, made or entered into for or toward any plate, prize or sum of money, of the value or amount of five hundred rupees or upwards, to be awarded to the winner or winners of any horse-race. Exception in favour of certain prizes for horse-racing.

Nothing in this section shall be deemed to legalize any transaction connected with horse-racing, to which the provisions of section 294A of the Indian Penal Code apply. Section 294-A of the Indian Penal Code not affected.

(a) The second clause of exception which was repealed by the Specific Relief Act has been omitted.

Sections 31-34.

CHAPTER III.

OF CONTINGENT CONTRACTS.

"Contingent contract" defined.

31. A "contingent contract" is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

Illustrations.

A contracts to pay B Rs. 10,000 if B's house is burnt. This is a contingent contract.

Enforcement of contracts contingent on an event happening.

32. Contingent contracts to do or not to do anything if an uncertained future event happens cannot be enforced by law unless and until that event has happened.

If the event becomes impossible, such contract become void.

Illustrations.

(*a*) A makes a contract with B to buy B's horse if A survives C. This contract cannot be enforced by law unless and until C dies in A's lifetime.

(*b*) A makes a contract with B to sell a horse to B at a specified price, if C, to whom the horse has been offered, refuses to buy him. The contract cannot be enforced by law unless and until C refuses to buy the horse.

(*c*) A contracts to pay B a sum of money when B marries C. C dies without being married to B. The contract becomes void.

Enforcement of contracts contingent on an event not happening.

33. Contingent contracts to do or not to do anything if an uncertain future event does not happen can be enforced when the happening of that event becomes impossible, and not before.

Illustration.

A agrees to pay B a sum of money if a certain ship does not return. The ship is sunk. The contract can be enforced when the ship sinks.

When event on which contract is contingent to be deemed impossible, if it is the future conduct of a living person.

34. If the future event on which a contract is contingent is the way in which a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies.

Illustration.

A agrees to pay B a sum of money if B marries C.

C marries D. The marriage of B to C must now be considered impossible, although it is possible that D may die and that C may afterwards marry B.

Sections 35-37.

35. Contingent contracts to do or not to do anything if a specified uncertain event happens within a fixed time become void if, at the expiration of the time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.

When contracts become void which are contingent on happening of specified event within fixed time.

Contingent contracts to do or not to do anything if a specified uncertain event does not happen within a fixed time may be enforced by law when the time fixed has expired and such event has not happened, or, before the time fixed has expired, if it becomes certain that such event will not happen.

When contracts may be enforced which are contingent on specified event not happening within fixed time.

Illustrations.

(*a*) A promises to pay B a sum of money if a certain ship returns within a year. The contract may be enforced if the ship returns within the year; and becomes void if the ship is burnt within the year.

(*b*) A promises to pay B a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship does not return within the year, or is burnt within the year.

36. Contingent agreements to do or not to do anything, if an impossible event happens, are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

Agreements contingent on impossible events void.

Illustrations.

(*a*) A agrees to pay B 1,000 rupees if two straight lines should enclose a space. The agreement is void.

(*b*) A agrees to pay B 1,000 rupees if B will marry A's daughter C. C was dead at the time of the agreement. The agreement is void.

CHAPTER IV.

OF THE PERFORMANCE OF CONTRACTS.

Contracts which must be performed.

37. The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law.

Obligation of parties to contracts.

Promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract.

Sections 38-39.

Illustrations.

(*a*) A promises to deliver goods to B on a certain day on payment of Rs. 1,000. A dies before that day. A's representatives are bound to deliver the goods to B, and B is bound to pay the Rs. 1,000 to A's representatives.

(*b*) A promises to paint a picture for B by a certain day, at a certain price. A dies before the day. The contract cannot be enforced either by A's representatives or by B.

Effect of refusal to accept offer of performance.

38. Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract.

Every such offer must fulfil the following conditions:—

(1) it must be unconditional.

(2) it must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do.

(3) if the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver.

An offer to one of several joint promisees has the same legal consequences as offer to all of them.

Illustrations.

A contracts to deliver to B at his warehouse, on the first March 1873, 100 bales of cotton of a particular quality. In order to make an offer of performance with the effect stated in this section, A must bring the cotton to B's warehouse, on the appointed day, under such circumstances that B may have a reasonable opportunity of satisfying himself that the thing offered is cotton of the quality contracted for, and that there are 100 bales.

Effect or refusal of party to perform promise wholly.

39. When a party to a contract has refused to perform, or disabled himself from performing his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct his acquiescence in its continuance.

Illustrations.

(*a*) A, a singer, enters into a contract with B, the manager of a theatre to sing at his theatre two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night A wilfully absents herself from the theatre. B is at liberty to put an end to the contract.

Sections 40-43.

(*b*) A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every week during the two months, and B engages to pay her at the rate of 100 rupees for each night. On the sixth night, A wilfully absents herself. With the assent of B, A sings on the seventh night. B has signified his acquiescence in the continuance of the contract, and cannot now put an end to it, but is entitled to compensation for the damage sustained by him, through A's failure to sing on the sixth night.

By whom Contracts must be performed.

Person by whom promise is to be performed.

40. If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representatives may employ a competent person to perform it.

Illustrations.

(*a*) A promises to pay B a sum of money. A may perform this promise either by personally paying the money to B, or by causing it to be paid to B by another; and, if A dies before the time appointed for payment, his representatives must perform the promise or employ some proper person to do so.

(*b*) A promises to paint a picture for B. A must perform this promise personally.

Effect of accepting performance from third person.

41. When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

Devolution of joint liabilities.

42. When two or more persons have made a joint promise, then, unless a contrary intention appears by the contract, all such persons, during their joint lives, and, after the death of any of them, his representative jointly with the survivor or survivors, and, after the death of the last survivor, the representatives of all jointly, must fulfil the promise.

Any one of joint promisors may be compelled to perform.

43. When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any [*one or more] of such joint promisors to perform the whole of the promise.

Each promisor may compel contribution.

Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

*These words were substituted for the original word 'one' by section 5 of Act IV of 1912.

Sections 44-45.

Sharing of loss by default in contribution.

If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

Explanation.—Nothing in this section shall prevent a surety from recovering from his principal, payments made by the surety on behalf of the principal, or entitle the principal to recover anything from the surety on account of payments made by the principal.

Illustrations.

(*a*) A, B and C jointly promise to pay D 3,000 rupees. D may compel either A or B or C to pay him 3,000 rupees.

(*b*) A, B and C jointly promise to pay D the sum of 3,000 rupees. C is compelled to pay the whole. A is insolvent, but his assets are sufficient to pay one-half of his debts. C is entitled to receive 500 rupees from A's estate, and 1,250 rupees from B.

(*c*) A, B and C are under a joint promise to pay D 3,000 rupees. C is unable to pay anything, and A is compelled to pay the whole. A is entitled to receive 1,500 rupees from B.

(*d*) A, B and C are under a joint promise to pay D 3,000 rupees, A and B being only sureties for C. C fails to pay. A and B are compelled to pay the whole sum. They are entitled to recover it from C.

Effect of release of one joint promisor.

44. Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors; neither does it free the joint promisor so released from responsibility to the other joint promisor or joint promisors.

Devolution of joint rights.

45. When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and, after the death of any of them, with the representative of such deceased person jointly, with the survivor or survivors, and, after the death of the last survivor, with the representatives of all jointly [a].

Illustration.

A, in consideration of 5,000 rupees lent to him by B and C, promises B and C jointly to repay them that sum with interest on a day specified. B dies. The right to claim performance rests with B's representative jointly with C during C's life and after the death of C with the representatives of B and C jointly.

[a] For an exception to s. 45 in case of Government securities, see Act IX of 1894, s. 4.

Sections 46-50.

Time and Place for Performance.

46. Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time. Time for performance of promise where no application is to be made and no time is specified.

Explanation.—The question 'what is a reasonable time' is, in each particular case, a question of fact.

47. When a promise is to be performed on a certain day, and the promisor has undertaken to perform it without application by the promisee, the promisor may perform it at any time during the usual hours of business on such day and at the place at which the promise ought to be performed. Time and place for performance of promise where time is specified and no application to be made.

Illustration.

A promises to deliver goods at B's warehouse on the first January. On that day A brings the goods to B's warehouse, but after the usual hour for closing it, and they are not received. A has not performed his promise.

48. When a promise is to be performed on a certain day, and the promisor has not undertaken to perform it without application by the promisee, it is the duty of the promisee to apply for performance at a proper place and within the usual hours of business. Application for performance on certain day to be at proper time and place.

Explanation.—The question 'what is a proper time and place' is, in each particular case, a question of fact.

49. When a promise is to be performed without application by the promisee, and no place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at such place. Place for performance of promise where no application to be made and no place fixed.

Illustration.

A undertakes to deliver a thousand maunds of jute to B on a fixed day. A must apply to B to appoint a reasonable place for the purpose of receiving it, and must deliver it to him at such place.

50. The performance of any promise may be made in any manner, or at any time which the promisee prescribes or sanctions. Performance in manner or at time prescribed or sanctioned by promisee.

Illustrations.

(*a*) B owes A 2,000 rupees. A desires B to pay the amount to A's account with C, a banker. B, who also banks with C, orders the amount to be transferred from his account to A's credit, and this is

Sections 51-52.

done by C. Afterwards, and before A knows of the transfer, C fails. There has been a good payment by B.

(*b*) A and B are mutually indebted. A and B settle an account by setting off one item against another, and B pays A the balance found to be due from him upon such settlement. This amounts to a payment by A and B, respectively, of the sums which they owed to each other.

(*c*) A owes B 2,000 rupees. B accepts some of A's goods in reduction of the debt. The delivery of the goods operates as a part payment.

(*d*) A desires B, who owes him Rs. 100, to send him a note for Rs. 100 by post. The debt is discharged as soon as B puts into the post a letter containing the note duly addressed to A.

Performance of Reciprocal Promises.

Promisor not bound to perform unless reciprocal promisee ready and willing to perform.

51. When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

Illustrations.

(*a*) A and B contract that A shall deliver goods to B to be paid for by B on delivery.

(*b*) A need not deliver the goods unless B is ready and willing to pay for the goods on delivery.

B need not pay for the goods, unless A is ready and willing to deliver them on payment.

(*c*) A and B contract that A shall deliver goods to B at a price to be paid by instalments, the first instalment to be paid on delivery.

A need not deliver, unless B is ready and willing to pay the first instalment on delivery.

B need not pay the first instalment, unless A is ready and willing to deliver the goods on payment of the first instalment.

Order of performance of reciprocal promises.

52. Where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in that order, and where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of the transaction requires.

Illustrations.

(*a*) A and B contract that A shall build a house for B at a fixed price. A's promise to build the house must be performed before B's promise to pay for it.

(*b*) A and B contract that A shall make over his stock-in-trade to B at a fixed price, and B promises to give security for the payment of the money. A's promise need not be performed until the security is given, for the nature of the transaction requires that A should have security before he delivers up his stock.

Sections 53-55.

Liability of party preventing event on which contract is to take effect.

53. When a contract contains reciprocal promises, and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented; and he is entitled to compensation from the other party for any loss which he may sustain in consequence of the non-performance of the contract.

Illustrations.

A and B contract that B shall execute certain work for A for a thousand rupees. B is ready and willing to execute the work accordingly, but A prevents him from doing so. The contract is voidable at the option of B; and, if he elects to rescind it, he is entitled to recover from A compensation for any loss which he has incurred by its non-performance.

Effect of default as to that promise which should be first performed, in contract consisting of reciprocal promises.

54. When a contract consists of reciprocal promises such that one of them cannot be performed, or that its performance cannot be claimed till the other has been performed, and the promisor of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the contract.

Illustrations.

(*a*) A hires B's ship to take in and convey from Calcutta to the Mauritius, a cargo to be provided by A, B receiving a certain freight for its conveyance. A does not provide any cargo for the ship. A cannot claim the performance of B's promise and must make compensation to B for the loss which B sustains by the non-performance of the contract.

(*b*) A contracts with B to execute certain builders' work for a fixed price, B supplying the scaffolding and timber necessary for the work. B refuses to furnish any scaffolding or timber, and the work cannot be executed. A need not execute the work, and B is bound to make compensation to A for any loss caused to him by the non-performance of the contract.

(*c*) A contract with B to deliver to him, at a specified price, certain merchandise on board a ship which cannot arrive for a month, and B engages to pay for the merchandise within a week from the date of the contract. B does not pay within the week. A's promise to deliver need not be performed, and B must make compensation.

(*d*) A promises B to sell him one hundred bales of merchandise to be delivered next day and B promises A to pay for them within a month. A does not deliver according to his promise. B's promise to pay need not be performed, and A must make compensation.

Effect of failure to perform at fixed time, in contract in which time is essential.

55. When a party to a contract promises to a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as

has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.

Effect of such failure when time is not essential.

If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do so such thing at or before the specified time, but the promise is entitled to compensation from the promisor for any loss occasioned to him by such failure.

Effect of acceptance of performance at time other than that agreed upon.

If, in case of a contract voidable on account of the promisor's failure to perform is promise at the time agreed the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of such acceptance, he gives notice to the promisor of his intention to do so.

Agreement to do impossible act.

56. An agreement to do an act impossible in itself is void.

Contract to do act afterwards becoming impossible or unlawful

A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

Compensation for loss through non-performance of act known to be impossible or unlawful.

Where one person has promised to do something which he knew, or, with reasonable diligence might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.

Illustrations.

(*a*) A agrees with B to discover treasure by magic. The agreement is void.

(*b*) A and B contract to marry each other. Before the time fixed for the marriage, A goes mad. The contract becomes void.

(*c*) A contracts to marry B, being already married to C, and being forbidden by the law to which he is subject to practise polygamy. A must make compensation to B for the loss caused to her by the non-performance of his promise.

(*d*) A contracts to take in cargo for B at a foreign port. A's Government afterwards declares war against the country in which the port is situated. The contract becomes void when war is declared.

(*e*) A contracts to act at a theatre for six months in consideration of a sum paid in advance by B. On several occasions A is too ill to act. The contract to act on those occasions becomes void.

Sections 57-60.

57. When persons reciprocally promise, firstly, to do certain things which are legal, and secondly, under specified circumstances, to do certain other things which are illegal, the first set of promises is a contract, but the second is a void agreement. Reciprocal promise to do things legal, and also other things illegal.

Illustration.

A and B agree that A shall sell B a house for 10,000 rupees, but that, if B uses it as a gambling house, he shall pay A 50,000 rupees for it.

The first set of reciprocal promises, *viz.*, to sell the house and to pay 10,000 rupees for it, is a contract.

The second set is an unlawful object, namely, that B may use the house as gambling house, and is a void agreement.

58. In the case of an alternative promise, one branch of which is legal and the other illegal, the legal branch alone can be enforced. Alternative promise, one branch being illegal.

Illustration.

A and B agree that A shall pay B 1,000 rupees, for which B shall afterwards deliver to A either rice or smuggled opium.

This is a valid contract to deliver rice and a void agreement as to the opium.

Appropriation of Payments.

59. Where a debtor, owing several distinct debts to one person, makes a payment to him either with express intimation, or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted must be applied accordingly. Application of payment where debt to be discharged is not indicated.

Illustrations.

(*a*) A owes B, among other debts, 1,000 rupees upon a promissory note which falls due on the first June. He owes B no other debt of that amount. On the first June A pays to B 10,000 rupees. The payment is to be applied to the discharge of the promissory note.

(*b*) A owes to B, among other debts, the sum of 567 rupees. B writes to A and demands payment of this sum. A sends to B 567 rupees. This payment is to be applied to the discharge of the debt of which B had demanded payment.

60. Where the debtor has omitted to intimate, and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not Application of payment where debt to be discharged is not indicated.

barred by the law in force for the time being as to the limitation of suits.

Application of payment where neither party appropriates.

61. Where neither party makes any appropriation the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionably.

Contracts which need not be performed.

Effect of novation, rescission and alteration of contract.

62. If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.

Illustrations.

(*a*) A owes money to B under a contract. It is agreed between A, B and C that B shall thenceforth accept C as his debtor, instead of A. The old debt of A to B is at an end, and a new debt from C to B has been contracted.

(*b*) A owes to B 10,000 rupees. A enters into an arrangement with B, and gives B a mortgage of his (A's) estate for 5,000 rupees in place of the debt of 10,000 rupees. This is a new contract and extinguishes the old.

(*c*) A owes B 1,000 rupees under a contract. B owes C 1,000 rupees. B orders A to credit C with 1,000 rupees in his books, but C does not assent to the arrangement B still owes C 1,000 rupees, and no new contract has been entered into.

Promisee may dispense with or remit performance of promise.

63. Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance, or may accept instead of it any satisfaction which he thinks fit.

Illustrations.

(*a*) A promises to paint a picture for B. B, afterwards forbids him to do so. A is no longer bound to perform the promise.

(*b*) A owes B 5,000 rupees. A pays to B, and B accepts, in satisfaction of the whole debt 2,000 rupees paid at the time and place at which the 5,000 rupees were payable. The whole debt is discharged.

(*c*) A owes B 5,000 rupees, C pays to B 1,000 rupees, and B accepts them, in satisfaction of his claim on A. This payment is a discharge of the whole claim.

(*d*) A owes B, under a contract, a sum of money, the amount of which has not been ascertained. A, without ascertaining the amount, gives to B, and B in satisfaction thereof, accepts the sum of 2,000 rupees, This is a discharge of the whole debt, whatever may be its amount.

(*e*) A owes B 2,000 rupees, and is also indebted to other creditors. A makes an arrangement with his creditors, including B, to pay them a

composition [*a*] of eight annas in the rupee upon their respective demands. Payment to B of 1,000 rupees is a discharge of B's demand.

Consequences of rescission of voidable contract.

64. When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is promisor. The party rescinding voidable contract shall, if he has received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received.

Obligation of person who has received advantage under void agrement or contract that becomes void.

65. When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it.

Illustrations.

(*a*) A pays B 1,000 rupees in consideration of B's promising to marry C, A's daughter. C is dead at the time of the promise. The agreement is void, but B must repay A the 1,000 rupees.

(*b*) A contracts with B to deliver to him 250 maunds of rice before the first of May. A delivers 130 maunds only before that day, and none after. B retains the 130 maunds after the first of May. He is bound to pay A for them.

(*c*) A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her a hundred rupees for each night's performance. On the sixth night, A wilfully absents herself from the theatre, and B, in consequence, rescinds the contract. B must pay A for the five nights on which she had sung.

(*d*) A contracts to sing for B at a concert for 1,000 rupees, which are paid in advance. A is too ill to sing. A is not bound to make compensation to B for the loss the profits which B would have made if A had been able to sing, but must refund to B the 1,000 rupees paid in advance.

Mode of communicating or revoking rescission of voidable contract.

66. The rescission of a voidable contract may be communicated or revoked in the same manner, and subject to the same rules as apply to the communication or revocation of a proposal.

Effect of neglect of promisee to afford promisor reasonable facilities for performance.

67. If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby.

[*a*] This word was substituted for the original word 'compensation' by Section 6 of Act IV of 1912.

Sections 68-70.

Illustration.

A contracts with B to repair B's house.

B neglects or refuses to point out to A the places in which his house requires repair.

A is excused for the non-performance of the contract if it is caused such neglect or refusal.

CHAPTER V.

OF CERTAIN RELATIONS RESEMBLING THOSE CREATED BY CONTRACT.

Claim for necessaries supplied to person incapable of contracting, or on his account.

68. If a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

Illustrations.

(*a*) A supplies B, a lunatic, with necessaries suitable to his condition in life. A is entitled to be reimbursed from B's property.

(*b*) A supplies the wife and children of B, a lunatic, with necessaries suitable to their condition in life. A is entitled to be reimbursed from B's property.

Reimbursement of person paying money due by another, in payment of which he is interested.

69. A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

Illustration.

B holds land in Bengal, on a lease granted by A, the zemindar. The revenue payable by A to the Government being in arrear, his land is advertised for sale by the Government. Under the revenue law, the consequence of such sale will be the annulment of B's lease. B, to prevent the sale and the consequent annulment of his own lease, pays to the Government the sum due from A. A is bound to make good to B the amount so paid.

Obligation of person enjoying benefit of non-gratuitous act.

70. Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

Illustrations.

(*a*) A, a tradesman, leaves goods at B's house by mistake. B treats the goods as his own. He is bound to pay A for them.

Sections 71-73.

(*b*) A saves B's property from fire. A is not entitled to compensation from B, if the circumstances show that he intended to act gratuitously.

Responsibility of finder of goods.

71. A person who finds goods belonging to another and takes them into his custody, is subject to the same responsibility as a bailee.

Liability of person to whom money is paid, or thing delivered, by mistake or under coercion.

72. A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it.

Illustrations.

(*a*) A and B jointly owe 100 rupees to C. A alone pays the amount to C, and B, not knowing this fact, pays 100 rupees over again to C. C is bound to repay the amount to B.

(*b*) A railway company refuses to deliver up certain goods to the consignee, except upon the payment of an illegal charge for carriage. The consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was illegally excessive.

CHAPTER VI.

OF THE CONSEQUENCES OF BREACH OF CONTRACT.

Compensation for loss or damage caused by breach of contract.

73. When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

Compensation for failure to discharge obligation resembling those created by contract.

When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.

Explanation.—In estimating the loss or damage arising from a breach of contract the means which existed of remedying the inconvenience caused by the the non-performance of the contract must be taken into account.

Section 73.

Illustrations.

(*a*) A contracts to sell and deliver 50 maunds of saltpetre to B, at a certain price to be paid on delivery. A breaks his promise. B is entitled to receive from A, by way of compensation, the sum, if any, by which the contract price falls short of the price for which B might have obtained 50 maunds of saltpetre of like quality at the time when the saltpetre ought to have been delivered.

(*b*) A hires B's ship to go to Bombay, and there take on board, on the first of January, a cargo, which A is to provide, and to bring it to Calcutta, the freight to be paid when earned. B's ship does not go to Bombay, but A has opportunities of procuring suitable conveyance for the cargo upon terms as advantageous as those on which he had chartered the ship. A avails himself of those opportunities, but is put to trouble and expense in doing so. A is entitled to receive compensation from B in respect of such trouble and expense.

(*c*) A contracts to buy of B, at the stated price, 50 maunds of rice, no time being fixed for delivery. A afterwards informs B that he will not accept the rice if tendered to him. B is entitled to receive from A, by way of compensation, the amount, if any, by which the contract price exceeds that which B can obtain for the rice at the time when A informs B that he will not accept it.

(*d*) A contracts to buy B's ship for 60,000 rupees, but breaks his promise. A must pay to B by way of compensation, the excess, if any, of the contract price over the price which B can obtain for the ship at the time of the breach of promise.

(*e*) A, the owner of a boat, contracts with B to take a cargo of jute to Mirzapur, for sale at that place, starting on a specified day. The boat, owing to some avoidable cause, does not start at the time appointed, whereby the arrival of the cargo at Mirzapur is delayed beyond the time when it would have arrived if the boat had sailed according to the contract. After that date, and before the arrival of the cargo, the price of jute falls. The measure of the compensation payable to B by A is the difference between the price which B could have obtained for the cargo at Mirzapur at the time when it would have arrived if forwarded in due course, and its market price at the time when it actually arrived.

(*f*) A contracts to repair B's house in a certain manner and receives payment in advance. A repairs the house, but not according to contract. B is entitled to recover from A the cost of making the repairs conform to the contract.

(*g*) A contracts to let his ship to B for a year, from the first of January, for a certain price. Freights rise, and on the first of January, the hire obtainable for the ship is higher than the contract price. A breaks his promise. He must pay to B, by way of compensation, a sum equal to the difference between the contract price and the price for which B could hire a similar ship for a year on and from the first of January.

(*h*) A contracts to supply B with a certain quantity of iron at a fixed price, being a higher price than that for which A could procure and deliver the iron. B wrongfully refuses to receive the iron. B must pay to A by way of compensation, the difference between the contract price of the iron and the sum for which A could have obtained and delivered it.

Section 73.

(*i*) A delivers to B, a common carrier, a machine, to be conveyed, without delay, to A's mill, informing B that his mill is stopped for want of the machine. B unreasonably delays the delivery of the machine, and A, in consequence, loses a profitabe contract with the Government. A is entitled to receive from B, by way of compensation, the average amount of profit which would have been made by the working of the mill during the time that delivery of it was delayed but not the loss sustained through the loss of the Government contract.

(*j*) A having contracted with B to supply B with 1,000 tons of iron at 100 rupees a ton, to be delivered at a stated time, contracts with C for the purchase of 1,000 tons of iron at Rs. 80 a ton, telling C that he does so for the purpose of performing his contract with B. C fails to perform his contract with A who cannot procure other iron, and B, in consequence, rescinds the contract. C must pay to A 20,000 rupees, being the profit which A would have made by the performance of his contract with B.

(*k*) A contracts with B to make and deliver to B by a fixed day, for a specified price, a certain piece of machinery. A does not deliver the piece of machinery at the time specified, and in consequence of this, B is obliged to procure another at a higher price than that which he was to have paid to A, and is prevented from performing a contract which B had made with a third person at the time of his contract with A (but which had not been then communicated to A), and is compelled to make compensation for breach of that contract. A must pay to B, by way of compensation, the difference between the contract price of the piece of the machinery and the sum paid by B for another, but not the sum paid by B to the third person by way of compensation.

(*l*) A, a builder, contracts, to erect and finish a house by the first of January, in order that B may give possession of it at that time to C, to whom B has contracted to let it. A is informed of the contract between B and C. A builds the house so badly that, before the first of January, it falls down and has to be re-built by B, who in consequence, loses the rent which he was to have received from C, and is obliged to make compensation to C for the breach of his contract. A must make compensation to B for the cost of rebuilding the house for the rent lost, and for the compensation made to C.

(*m*) A sells certain merchandise to B, warranting it to be of a particular quality, and B, in reliance upon this warranty, sells it to C with a similar warranty. The goods prove to be not according to the warranty, and B becomes liable to pay C a sum of money by way of compensation. B is entitled to be reimbursed this sum by A.

(*n*) A contracts to pay a sum of money to B on a day specified. A does not pay the money on that day. B, in consequence of not receiving the money on that day, is unable to pay his debts, and is totally ruined. A is not liable to make good to B anything except the principal sum he contracted to pay, together with interest up to the day of payment.

(*o*) A contracts to deliver 50 maunds of saltpetre to B on the first of January, at a certain price. B afterwards, before the first of January, contracts to sell the saltpetre to C at a price higher than the

Section 74.

market-price of the first of January. A breaks his promise. In estimating the compensation payable by A to B, the market-price of the first of January and not the profit which would have arisen to B from the sale to C is to be taken into account.

(*p*) A contracts to sell and deliver 500 bales of cotton to B on a fixed day. A knows nothing of B's mode of conducting his business. A breaks his promise, and B having no cotton, is obliged to close his mill. A is not responsible to B for the loss caused to B by the closing of the mill.

(*q*) A contracts to sell and deliver to B, on the first of January, certain cloth which B intends to manufacture into caps of a particular kind, for which there is no demand, except at that season. The cloth is not delivered till after the appointed time, and too late to be used that year in making caps. B is entitled to receive from A, by way of compensation, the difference between the contract price of the cloth and its market-price at the time of delivery, but not the profits which he expected to obtain by making caps, nor the expenses which he has been put to in making preparation for the manufacture.

(*r*) A, a shipowner, contracts with B to convey him from Calcutta to Sydney in A's ship, sailing on the first of January, and B pays to A, by way of deposit, one-half of his passage money. The ship does not sail on the first of January, and B, after being, in consequence, detained in Calcutta for some time and thereby put to some expense, proceeds to Sydney in another vessel, and, in consequence, arriving too late in Sydney, loses a sum of money. A is liable to repay to B his deposit, with interest, and the expense to which he is put by his detention in Calcutta, and the excess, if any, of the passage money paid for the second ship over that agreed upon for the first, but not sum of money which B lost by arriving in Sydney too late.

Compensation for breach of contract where penalty stipulated for.

*74. When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

Explanation.—A stipulation for increased interest from the date of default may be a stipulation by way of penalty.

Exception.—When any person enters into any bail-bond, recognizance or other instrument of the same nature, or under the provisions of any law, or under the orders of the Government of India or of any Local Government, gives any bond for the performance of any public duty or act in which the public are interested, he

* This was substituted for the original paragraph 1 of the section by sub-section (1) of section 4 of Act IV of 1912.

shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.

Explanation.—A person who enters into a contract with Government does not necessarily thereby undertake any public duty, or promise to do an act in which the public are interested.

Illustrations.

(*a*) A contracts with B to pay B 1,000 rupees, if he fails to pay B 500 rupees on a given day. A fails to pay B 500 rupees on that day. B is entitled to recover from A such compensation, not exceeding 1,000 rupees as the Court considers reasonable.

(*b*) A contracts with B that, if A practises as a surgeon within Calcutta, he will pay B 5,000. A practises as a surgeon in Calcutta. B is entitled to such compensation, not exceeding 5,000 rupees as the Court considers reasonable.

(*c*) A gives a recognizance binding him in a penalty of 500 rupees to appear in Court on a certain day. He forfeits his recognizance. He is liable to pay the whole penalty.

*(*d*) A gives B a bond for the repayment of Rs. 1,000 with interest at 12 per cent at the end of six months, with a stipulation that, in case of default, interest shall be payable at the rate of 75 per cent from the date of default. This is a stipulation by way of penalty and B is only entitled to recover from A such compensation as the Court considers reasonable.

(*e*) A, who owes money to B, a money-lender, undertakes to repay him by delivering to him ten maunds of grain on a certain date and stipulates that, in the event of his not delivering the stipulated amount by the stipulated date, he shall be liable to deliver twenty maunds. This is a stipulation by way of penalty and B is only entitled to reasonable compensation in case of breach.

(*f*) A undertakes to repay B a loan of Rs. 1,000 by five equal monthly instalments with a stipulation that, in default of payment of any instalment, the whole shall become due. This stipulation is not by way of penalty, and the contract may be enforced according to its terms.

(*g*) A borrows Rs. 100 from B and gives him a bond for Rs. 200 payable by five yearly instalments of Rs. 40, with a stipulation that, in default of payment of any instalment, the whole shall become due. This is a stipulation by way of penalty.

75. A person who rightly rescinds a contract is entitled to compensation for any damage which he has sustained through the non-fulfilment of the contract. **Party rightfully rescinding contract entitled to compensation.**

Illustration.

A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night, A wilfully absents herself from the theatre, and B, in

*These illustrations were added by sub-section (2) of Section 7 of Act IV of 1912.

consequence, rescinds the contract. B is entitled to claim compensation for the damage which he has sustained through the non-fulfilment of the contract.

*CHAPTER VII.

CHAPTER VIII.

OF INDEMNITY AND GUARANTEE.

"Contract of indemnity" defined.

124. A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a "contract of indemnity."

Illustration.

A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of 200 rupees. This is a contract of indemnity.

Rights of indemnity holder when sued.

125. The promisee in a contract of indemnity, acting, within the scope of his authority, is entitled to recover from the promisor—

(1) all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies;

(2) all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorised him to bring or defend the suit;

(3) all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorised him to compromise the suit.

"Contract of guarantee," "surety," "principal debtor," and "creditor."

126. A "contract of guarantee" is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the "surety": the person in respect of whose default the guarantee is given is called the

*Chapter VII was repealed by Section 65 of Act V of 1932.

"principal debtor," and the person to whom the guarantee is given is called the "creditor". A guarantee may be either oral or written.

Consideration for guarantee.

127. Anything done, or any promise made, for the benefit of the principal debtor may be a sufficient consideration to the surety for giving the guarantee.

Illustrations.

(*a*) B requests A to sell and deliver to him goods on credit. A agrees to do so, provided C will guarantee the payment of the price of the goods. C promises to guarantee the payment in consideration of A's promise to deliver the goods. This is a sufficient consideration for C's promise.

(*b*) A sells and delivers goods to B. C afterwards requests A to forbear to sue B for the debt for a year, and promises that, if he does so C will pay for them in default of payment by B. A agrees to forbear as requested. This is a sufficient consideration for C's promise.

(*c*) A sells and delivers goods to B. C afterwards, without consideration, agrees to pay for them in default of B. The agreement is void.

Surety's liability.

128. The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.

Illustration.

A guarantees to B the payment of a bill of exchange by C, the acceptor. The bill is dishonoured by C. A is liable, not only for the amount of the bill but also for any interest and charges which may have become due on it.

"Continuing guarantee."

129. A guarantee which extends to a series of transactions is called a "continuing guarantee."

Illustrations.

(*a*) A, in consideration that B will employ C in collecting the rents of B's zamindari, promises B to be responsible to the amount of 5,000 rupees, for the due collection and payment by C of those rents. This is a continuing guarantee.

(*b*) A guarantees payment to B, a tea-dealer, to the amount of £100, for any tea he may from time to time supply to C. B supplies C with tea to above the value of £100, and C pays B for it. Afterwards, B supplies C with tea to the value of £200. C fails to pay. The guarantee given by A was a continuing guarantee, and he is accordingly liable to B to the extent of £100.

(*c*) A guarantees payment to B of the price of five sacks of flour to be delivered by B to C and to be paid for in a month. B delivers five sacks to C. C pays for them. Afterwards B delivers four sacks to C, which C does not pay for. The guarantee given by A was not a continuing guarantee, and accordingly he is not liable for the price of four sacks.

Sections 130-133.

Revocation of continuing guarantee.

130. A continuing guarantee may at any time be revoked by the surety, as to future transactions, by notice to the creditor.

Illustrations.

(*a*) A, in consideration of B's discounting, at A's request, bills of exchange for C, guarantees to B, for twelve months, the due payment of all such bills to the extent of 5,000 rupees. B discounts bills for C to the extent of 2,000 rupees. Afterwards, at the end of three months A revokes the guarantee. This revocation discharges A from all liability to B for any subsequent discount. But A is liable to B for the 2,000 rupees, on default of C.

(*b*) A guarantees to B, to the extent of 10,000 rupees, that C shall pay all the bills that B shall draw upon him. B draws upon C. C accepts the bill. A gives notice of revocation. C dishonours the bill at maturity. A is liable upon his guarantee.

Revocation of continuing guarantee by surety's death

131. The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions.

Liability of two persons, primarily liable, not affected by arrangement between them that one shall be surety on other's default.

132. Where two persons contract with a third person to undertake a certain liability, and also contract with each other that one of them shall be liable only on the default of the other, the third person not being a party to such contract, the liability of each of such two persons to the third person under the first contract is not affected by the existence of the second contract, although such third person may have been aware of its existence.

Illustration.

A and B make a joint and several promissory note to C. A makes it, in fact, as surety for B, and C knows this at the time when the note is made. The fact that A, to the knowledge of C, made the note as surety for B, is no answer to a suit by C against A upon the note.

Discharge of surety by variance in terms of contract.

133. Any variance, made without the surety's consent, in the terms of the contract between the principal and the creditor, discharges the surety as to transactions subsequent to the variance.

Illustrations.

(*a*) A becomes surety to C for B's conduct as a manager in C's bank. Afterwards, B and C contract, without A's consent, that B's salary shall be raised, and that he shall become liable for one-fourth of the losses on overdrafts. B allows a customer to overdraw, and the bank loses a sum of money. A is discharged from his suretyship by the variance made without his consent, and is not liable to make good this loss.

Sections 134-135.

(*b*) A guarantees C against the misconduct of B in an office to which B is appointed by C, and of which the duties are defined by an Act of Legislature. By a subsequent Act, the nature of the office is materially altered. Afterwards B misconducts himself. A is discharged by the change from future liability under his guarantee, though the misconduct of B is in respect of a duty not affected by the latter Act.

(*c*) C agrees to appoint B as his clerk to sell goods at a yearly salary, upon A's becoming surety to C for B's duly accounting for moneys received by him as such clerk. Afterwards, without A's knowledge or consent, C and B agree that B should be paid by a commission on the goods sold by him and not by a fixed salary. A is not liable for subsequent misconduct of B.

(*d*) A gives to C a continuing guarantee to the extent of 3,000 rupees for any oil supplied by C to B on credit. Afterwards, B becomes embarrassed, and, without the knowledge of A, B and C contract that C shall continue to supply B with oil for ready money, and that the payments shall be applied to the then existing debts between B and C. A is not liable on his guarantee for any goods supplied after this new arrangement.

(*e*) C contracts to lend B 5,000 rupees on the 1st March. A guarantees repayment. C pays the 5,000 rupees to B on the 1st January. A is discharged from his liability, as the contract has been varied, inasmuch as C might sue B for the money before the 1st of March.

Discharge of surety by release or discharge of principal debtor.

134. The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.

Illustrations.

(*a*) A gives a guarantee to C for goods to be supplied by C to B. C supplies goods to B, and afterwards B becomes embarrassed and contracts with his creditors (including C) to assign to them his property in consideration of their releasing him from their demands. Here B is released from his debt by the contract with C, and A is discharged from his suretyship.

(*b*) A contracts with B to grow a crop of indigo on A's land and to deliver it to B at a fixed rate, and C guarantees A's performance of this contract. B diverts a stream of water which is necessary for irrigation of A's land, and thereby prevents him from raising the indigo. C is no longer liable on his guarantee.

(*c*) A contracts with B for a fixed price to build a house for B within a stipulated time, B supplying the necessary timber. C guarantees A's performance of the contract. B omits to supply the timber. C is discharged from his suretyship.

Discharge of surety when creditor compounds with, gives time to or agrees not to sue, principal debtor.

135. A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to or not to sue, the principal debtor discharges the surety, unless the surety assents to such contract.

Sections 136-140.

Surety not discharged when agreement made with third person to give time to principal debtor.

136. Where a contract to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor, the surety is not discharged.

Illustration.

C, the holder of an overdue bill of exchange drawn by A as surety for B, and accepted by B, contracts with M to give time to B. A is not discharged.

Creditor's forbearance to sue does not discharge surety.

137. Mere forbearance on the part of the creditor to sue the principal debtor or to enforce any other remedy against him does not, in the absence of any provision in the guarantee to the contrary, discharge the surety.

Illustration.

B owes to C a debt guaranteed by A. The debt becomes payable. C does not sue B for a year after the debt has become payable. A is not discharged from his suretyship.

Release of one co-surety does not discharge others.

138. Where there are co-sureties, a release by the creditor of one of them does not discharge the others; neither does it free the surety so released from his responsibility to the other sureties.

Discharge of surety by creditor's act or omission impairing surety's eventual remedy.

139. If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged.

Illustrations.

(*a*) B contracts to build a ship for a given sum, to be paid by instalments as the work reaches certain stages. A becomes surety to C for B's due performance of the contract. C, without the knowledge of A, prepays to B the last two instalments. A is discharged by this prepayment.

(*b*) C lends money to B on the security of a joint and several promissory note made in C's favour by B, and by A as surety for B, together with a bill of sale of B's furniture, which gives power to C to sell the furniture, and apply the proceeds in discharge of the note. Subsequently, C sells the furniture, but, owing to his misconduct and wilful negligence, only a small price is realized. A is discharged from liability on the note.

(*c*) A puts M as apprentice to B, and gives a guarantee to B for M's fidelity. B promises on his part that he will, at least once a month, see M make up the cash. B omits to see this done as promised, and M embezzles. A is not liable to B on his guarantee.

Rights of surety on payment or performance.

140. Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed

duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.

Surety's right to benefit of creditor's security.

141. A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not and, if the creditor loses or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.

Illustrations.

(*a*) C advances to B, his tenant, 2,000 rupees on the guarantee of A. C has also a further security for the 2,000 rupees by a mortgage of B's furniture. C cancels the mortgage. B becomes insolvent and C sues A on his guarantee. A is discharged from liability to the amount of the value of the furniture.

(*b*) C, a creditor, whose advance to B is secured by a decree, receives also a guarantee for that advance from A. C afterwards takes B's goods in execution under the decree, and then, without the knowledge of A, withdraws the execution. A is discharged.

(*c*) A, as surety for B, makes a bond jointly with B to C, to secure a loan from C to B. Afterwards, C obtains from B a further security for the same debt. Subsequently, C gives up the further security. A is not discharged.

Guarantee obtained by misrepresentation invalid.

142. Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.

Guarantee obtained by concealment invalid.

143. Any guarantee which the creditor has obtained by means of keeping silence as to a material circumstance is invalid.

Illustrations.

(*a*) A engages B as clerk to collect money for him. B fails to account for some of his receipts, and A in consequence calls upon him to furnish security for his duly accounting. C gives his guarantee for B's duly accounting, A does not acquaint C with B's previous conduct. B afterwards makes default. The guarantee is invalid.

(*b*) A guarantees to C payment for iron to be supplied by him to B to the amount of 2,000 tons. B and C have privately agreed that B should pay five rupees per ton beyond the market price, such excess to be applied in liquidation of an old debt. This agreement is concealed from A. A is not liable as a surety.

Sections 144-146.

Guarantee on contract that creditor shall not act on it until co-surety joins.

144. Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join.

Implied promise to indemnify surety.

145. In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety; and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but no sums which he has paid wrongfully.

Illustrations.

(*a*) B is indebted to C, and A is surety for the debt. C demands payment from A, and on his refusal sues him for the amount. A defends the suit having reasonable grounds for doing so, but is compelled to pay the amount of the debt with costs. He can recover from B the amount paid by him for costs, as well as the principal debt.

(*b*) C lends B a sum of money, and A, at the request of B, accepts a bill of exchange drawn by B upon A to secure the amount. C, the holder of the bill, demands payment of it from A, and, on A's refusal to pay, sues him upon the bill. A, not having reasonable grounds for so doing, defends the suit, and has to pay the amount of the bill and costs. He can recover from B the amount of the bill, but not the sum paid for costs, as there was no real ground for defending the action.

(*c*) A guarantees to C, to the extent of 2,000 rupees, payment for rice to be supplied by C to B. C supplies to B rice to a less amount than 2,000 rupees, but obtains from A payment of the sum of 2,000 rupees in respect of the rice supplied. A cannot recover from B more than the price of the rice actually supplied.

Co-sureties liable to contribute equally.

146. Where two or more persons are co-sureties for the same debt or duty, either jointly or severally, and whether under the same or different contracts, and whether with or without the knowledge of each other, the co-sureties, in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor.

Illustrations.

(*a*) A, B and C are sureties to D for the sum of 3,000 rupees lent to E. E makes default in payment. A, B and C are liable, as between themselves, to pay 1,000 rupees each.

(*b*) A, B and C are sureties to D for the sum of 1,000 rupees lent to E, and there is a contract between A, B and C that A is to be responsible to the extent of one-quarter, B to the extent of one-quarter, and C to the extent of one-half. E makes default in payment. As between the sureties, A is liable to pay 250 rupees, B 250 rupees, and C 500 rupees.

Sections 147-150.

147. Co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit. Liability of co-sureties bound in different sums.

Illustrations.

(*a*) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 30,000 rupees. A, B and C are each liable to pay 10,000 rupees.

(*b*) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 40,000 rupees. A is liable to pay 10,000 rupees, and B and C 15,000 rupees each.

(*c*) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 70,000 rupees. A, B and C have to pay each the full penalty of his bond.

CHAPTER IX.

OF BAILMENT.

148. A "bailment" is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the "bailor." The person to whom they are delivered is called the "bailee." "Bailment," "bailor," and "bailee" defined.

Explanation.—If a person already in possession of the goods of another contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor, of such goods although they may not have been delivered by way of bailment.

149. The delivery to the bailee may be made by doing any thing which has the effect of putting the goods in the possession of the intended bailee or of any person authorized to hold them on his behalf. Delivery to bailee how made.

150. The bailor is bound to disclose to the bailee faults in the goods bailed, of which the bailor is aware, and which materially interfere with the use of them, or expose the bailee to extraordinary risks; and, if he does Bailor's duty to disclose faults in goods bailed.

not make such disclosure, he is responsible for damage arising to the bailee directly from such faults.

If the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed.

Illustrations.

(*a*) A lends a horse, which he knows to be vicious, to B. He does not disclose the fact that the horse is vicious. The horse runs away. B is thrown and injured. A is responsible to B for damage sustained.

(*b*) A hires a carriage of B. The carriage is unsafe, though B is not aware of it and A is injured. B is responsible to A for the injury.

Care to be taken by bailee.

151. In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances take of his own goods of the same bulk, quality and value as the goods bailed.

Bailee when not liable for loss, etc., of thing bailed.

152. The bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of it described in section 151.

Termination of bailment by bailee's act inconsistent with conditions.

153. A contract of bailment is voidable at the option of the bailor, if the bailee does any act with regard to the goods bailed, inconsistent with the conditions of the bailment.

Illustrations.

A lets to B, for hire, a horse for his own riding. B drives the horse in his carriage. This is, at the option of A, a termination of the bailment.

Liability of bailee making unauthorized use of goods bailed.

154. If the bailee makes any use of the goods bailed, which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.

Illustrations.

(*a*) A lends a horse to B for his own riding only. B allows C, a member of his family, to ride the horse. C rides with care, but the horse accidentally falls and is injured. B is liable to make compensation to A for the injury done to the horse.

(*b*) A hires a horse in Calcutta from B expressly to march to Benares. A rides with due care, but marches to Cuttack instead. The horse accidentally falls and is injured. A is liable to make compensation to B for the injury to the horse.

Sections 155-159.

Effect of mixture, with bailor's consent, of his goods with bailee's.

155. If the bailee, with the consent of the bailor, mixes the goods of the bailor with his own goods, the bailor and the bailee shall have an interest, in proportion to their respective shares, in the mixture thus produced.

Effect of mixture, without bailor's consent, when the goods can be separated.

156. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, and the goods can be separated or divided, the property in the goods remains in the parties respectively; but the bailee is bound to bear the expense of separation or division, and any damage arising from the mixture.

Illustrations.

A bails 100 bales of cotton marked with a particular mark to B. B, without A's consent, mixes the 100 bales with other bales of his own, bearing a different mark: A is entitled to have his 100 bales returned, and B is bound to bear all the expense incurred in the separation of the bales, and any other incidental damage.

Effect of mixture, without bailor's consent, when the goods cannot be separated.

157. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.

Illustrations.

A bails a barrel of Cape flour worth Rs. 45 to B. B, without A's consent, mixes the flour with country flour of his own, worth only Rs. 25 a barrel. B must compensate A for the loss of his flour.

Repayment by bailor of necessary expenses.

158. Where, by the conditions of the bailment, the goods are to be kept or to be carried, or to have work done upon them by the bailee for the bailor, and the bailee is to receive no remuneration, the bailor shall repay to the bailee the necessary expenses incurred by him for the purpose of the bailment.

Restoration of goods lent gratuitously.

159. The lender of a thing for use may at any time require its return, if the loan was gratuitous, even though he lent it for a specified time or purpose. But, if, on the faith of such loan made for a specified time or purpose, the borrower has acted in such a manner that the return of the thing lent before the time agreed upon would cause him loss exceeding the benefit actually derived by him from the loan, the lender must, if he compels the return, indemnify the borrower for the amount in which the loss so occasioned exceeds the benefit so derived.

Sections 160-168.

Return of goods bailed on expiration of time or accomplishment of purpose.

160. It is the duty of the bailee to return, or deliver according to the bailor's directions, the goods bailed, without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished.

Bailee's responsibility when goods are not duly returned.

161. If, by the default of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time.

Termination of gratuitous bailment by death.

162. A gratuitous bailment is terminated by the death either of the bailor or of the bailee.

Bailor entitled to increase or profit from goods bailed.

163. In the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed.

Illustration.

A leaves a cow in the custody of B to be taken care of. The cow has a calf. B is bound to deliver the calf as well as the cow to A.

Bailor's responsibility to bailee.

164. The bailor is responsible to the bailee for any loss which the bailee may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods or to give directions, respecting them.

Bailment by several joint owners.

165. If several joint owners of goods bail them, the bailee may deliver them back to, or according to the directions of, one joint owner without the consent of all, in the absence of any agreement to the contrary.

Bailee not responsible on re-delivery to bailor without title.

166. If the bailor has no title to the goods, and the bailee, in good faith, delivers them back to, or according to the directions of, the bailor, the bailee is not responsible to the owner in respect of such delivery.

Right of third person claiming goods bailed.

167. If a person, other than the bailor, claims goods bailed, he may apply to the Court to stop the delivery of the goods to the bailor, and to decide the title to the goods.

Right of finder of goods; may sue for specific reward offered.

168. The finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and, to find out the owner; but he may retain the goods against the owner until he receives such compensation; and, where the owner has offered a specific reward for the return of goods lost, the finder may sue for such reward, and may retain the goods until he receives it.

Sections 169-174.

When finder of thing commonly on sale may sell it.

169. When a thing which is commonly the subject of sale is lost, if the owner cannot with reasonable diligence be found, or if he refuses, upon demand, to pay the lawful charges of the finder, the finder may sell it:—

(1) when the thing is in danger of perishing or of losing the greater part of its value, or,

(2) when the lawful charges of the finder, in respect of the thing found, amount to two-thirds of its value.

Bailee's particular lien.

170. Where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them.

Illustrations.

(*a*) A delivers a rough diamond to B, a jeweller, to be cut and polished, which is accordingly done. B is entitled to retain the stone till he is paid for the services he has rendered.

(*b*) A gives cloth to B, a tailor, to make into a coat. B promises A to deliver the coat as soon as it is finished, and to give a three month's credit for the price. B is not entitled to retain the coat until he is paid.

General lien of bankers, factors, wharfingers, attorneys and policy brokers.

171. Bankers, factors, wharfingers, attorneys of a High Court and the policy brokers may, in absence of a contract to the contrary, retain, as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect.

Bailments of Pledges.

"Pledge," "pawnor," and "pawnee," defined.

172. The bailment of goods as security for payment of a debt or performance of a promise is called "pledge". The bailor is in this case called the "pawnor." The bailee is called the "pawnee."

Pawnee's right of retainer.

173. The pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interest of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.

Pawnee not to retain for debt for promise other than that for which goods pledged.

174. The pawnee shall not, in the absence of a contract to that effect, retain the goods pledged for any debt or promise other than the debt or promise for which

Presumption in case of subsequent advances.

they are pledged; but such contract, in the absence of anything to the contrary, shall be presumed in regard to subsequent advances made by the pawnee.

Pawnee's right as to extraordinary expenses incurred.

175. The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged.

Pawnee's right where pawnor makes default.

176. If the pawnor makes default in payment of the debt, or performance, at the stipulated time, of the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security; or he may sell the thing pledged, on giving the pawnor reasonable notice of the sale.

If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

Defaulting pawnor's right to redeem.

177. If a time is stipulated for the payment of the debt, or performance of the promise, for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time before the actual sale of them; but he must, in that case, pay, in addition, any expenses which have arisen from his default.

Pledge by mercantile agent.

[**178.** Where a mercantile agent is, with the consent of the owner, in possession of goods or the documents of title to goods, any pledge made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorised by the owner of the goods to make the same, provided that the pawnee acts in good faith and has not at the time of the pledge notice that the pawnor has not authority to pledge.

Explanation.—In this section, the expressions "mercantile agent" and "documents of title" shall have the meanings assigned to them in the Sale of Goods Act, 1932.

Pledge by person in possession under voidable contract.

178-A. When the pawnor has obtained possession of the goods pledged by him under a contract voidable under section 19 or section 19-A, but the contract has not been rescinded at the time of the pledge, the pawnee acquires

[—] Substituted by Section 2 of Act VI of 1932.

Sections 179-187.

a good title to the goods, provided he acts in good faith and without notice of the pawnor's defect of title.]

Pledge where pawnor has only a limited interest.

179. Where a person pledged goods in which he has only a limited interest, the pledge is valid to the extent of that interest.

Suits by Bailees or Bailors against Wrong-doers.

Suit by bailor or bailee against wrong-doer.

180. If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or does them any injury, the bailee is entitled to use such remedies as the owner might have used in the like case if no bailment had been made; and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury.

Apportionment of relief or compensation obtained by such suits.

181. Whatever is obtained by way of relief or compensation in any such suit shall, as between the bailor and the bailee, be dealt with according to their respective interests.

CHAPTER X.

AGENCY.

Appointment and Authority of Agent

"Agent" and "principal" defined.

182. An "agent" is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the "principal".

Who may employ agent.

183. Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent.

Who may be an agent.

184. As between the principal and third persons any person may become an agent, but no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal according to the provisions in that behalf hereincontained.

Consideration not necessary.

185. No consideration is necessary to create an agency.

Agent's authority may be expressed or implied.

186. The authority of an agent may be expressed or implied.

Definitions of express and implied authority.

187. An authority is said to be express when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case.

Sections 188-191.

Illustration.

A owns a shop in Serampur, living himself in Calcutta, and visiting the shop occasionally. The shop is managed by B, and he is in the habit of ordering goods from C in the name of A for the purposes of the shop, and of paying for them out of A's funds with A's knowledge. B has an implied authority from A to order goods from C in the name of A for the purposes of the shop.

Extent of agent's authority.

188. An agent having an authority to do an act has authority to do every lawful thing which is necessary in order to do such act.

An agent having an authority to carry on a business has authority to do every lawful thing necessary for the purpose, or usually done in the course of conducting such business.

Illustrations.

(*a*) A is employed by B, residing in London, to recover at Bombay a debt due to B. A may adopt any legal process necessary for the purpose of recovering the debt, and may give a valid discharge for the same.

(*b*) A constitutes B his agent to carry on his business of a ship-builder. B may purchase timber and other materials, and hire workmen, for the purpose of carrying on the business.

Agent's authority in an emergency.

189. An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.

Illustrations.

(*a*) An agent for sale may have goods repaired, if it be necessary.

(*b*) A consigns provisions to B at Calcutta, with directions to send them immediately to C at Cuttack. B may sell the provisions at Calcutta, if they will not bear the journey to Cuttack without spoiling.

Sub-Agents.

When agent cannot delegate.

190. An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub-agent may, or, from the nature of the agency, a sub-agent must, be employed.

"Sub-agent" defined.

191. A "sub-agent" is a person employed by, and acting under the control of, the original agent in the business of the agency.

Sections 192-195.

Representation of principal by sub-agent properly appointed.

192. Where a sub-agent is properly appointed, the principal is, so far as regards third persons, represented by the sub-agent, and is bound by and responsible for his acts, as if he were an agent originally appointed by the principal.

Agent's responsibility for sub-agent.

The agent is responsible to the principal for the acts of the sub-agent:

Sub-agent's responsibility.

The sub-agent is responsible for his acts to the agent, but not to the principal, except in cases of fraud or wilful wrong.

Agents's responsibility for sub-agent appointed without authority.

193. Where an agent, without having authority to do so, has appointed a person to act as a sub-agent, the agent stands towards such person in the relation of a principal to an agent, and is responsible for his acts both to the principal and to third persons; the principal is not represented by, or responsible for, the acts of the person so employed, nor is that person responsible to the principal.

Relation between principal and person duly appointed by agent to act in business of agency.

194. Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him.

Illustrations.

(*a*) A directs B, his solicitor, to sell his estate by auction, and to employ an auctioneer for the purpose. B names C, an auctioneer, to conduct the sale. C is not a sub-agent, but is A's agent for the conduct of the sale.

(*b*) A authorizes B, a merchant in Calcutta, to recover the moneys due to A from C & Co. B instructs D, a solicitor, to take legal proceedings against C & Co., for the recovery of the money. D is not a sub-agent, but is solicitor for A.

Agent's duty in naming such person.

195. In selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and, if he does this, he is not responsible to the principal for the acts or negligence of the agent so selected.

Illustrations.

(*a*) A instructs B, a merchant, to buy a ship for him. B employs a ship surveyor of good reputation to choose a ship for A. The surveyor makes the choice negligently and the ship turns out to be unseaworthy and is lost. B is not, but the surveyor is, responsible to A.

Sections 196-200.

(*b*) A consigns goods to B, a merchant for, sale. B, in due course, employes an auctioneer in good credit to sell the goods of A, and allows the auctioneer to receive the proceeds of the sale. The auctioneer afterwards becomes insolvent without having accounted for the proceeds. B is not responsible to A for the proceeds.

Ratification.

Right of person as to acts done without his authority. Effect of ratification.

196. Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratifies them, the same effects will follow as if they had been performed by his authority.

Ratification may be expressed or implied.

197. Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done.

Illustrations.

(*a*) A, without authority, buys goods for B. Afterwards B sells them to C on his own account; B's conduct implies a ratification of the purchase made for him by A.

(*b*) A, without B's authority, lends B's money to C. Afterwards B accepts interest on the money from C. B's conduct implies a ratification of the loan.

Knowledge requisite for valid ratification.

198. No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective.

Effect of ratifying unauthorized act forming part of a transaction.

199. A person ratifying any unauthorized act done on his behalf ratifies the whole of the transaction of which such act formed a part.

Ratification of unauthorized act cannot injure third person.

200. An act done by one person on behalf of another, without such other person's authority, which, if done with authority, would have the effect of subjecting a third person to damages, or of terminating any right or interest of a third person, cannot, by ratification, be made to have such effect.

Illustrations.

(*a*) A, not being authorized thereto by B, demands, on behalf of B, the delivery of a chattel, the property of B, from C, who is in possession of it. This demand cannot be ratified by B, so as to make C liable for damages for his refusal to deliver.

(*b*) A holds a lease from B, terminable on three months' notice. C, an unauthorized person, gives notice of termination to A. The notice cannot be ratified by B, so as to be binding on A.

Sections 201-205.

Revocation of Authority.

Termination of agency.

201. An agency is terminated by the principal revoking his authority; or by the agent renouncing the business of the agency; or by the business of the agency being completed; or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.

Termination of agency, where agent has an interest in subject-matter.

202. Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

Illustrations.

(*a*) A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A. A cannot revoke this authority, nor can it be terminated by his insanity or death.

(*b*) A consigns 1,000 bales of cotton to B, who has made advances to him on such cotton, and desires B to sell the cotton, and to repay himself, out of the price, the amount of his own advances. A cannot revoke this authority, nor is it terminated by his insanity or death.

When principal may revoke agent's authority.

203. The principal may, save as is otherwise provided by the last preceding section, revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal.

Revocation where authority has been partly exercised.

204. The principal cannot revoke the authority given to his agent after the authority has been partly exercised, so far as regards such acts and obligations as arise from acts already done in the agency.

Illustrations.

(*a*) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's money remaining in B's hands. B buys 1,000 bales of cotton in his own name, so as to make himself personally liable for the price. A cannot revoke B's authority so far as regards payment for the cotton.

(*b*) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's moneys remaining in B's hands. B buys 1,000 bales of cotton in A's name, and so as not to render himself personally liable for the price. A can revoke B's authority to pay for the cotton.

Compensation for revocation by principal or renunciation by agent.

205. Where there is an express or implied contract, that the agency should be continued for any period of time, the principal must make compensation to the agent, or the agent to the principal, as the case may be, for any previous

revocation or renunciation of the agency without sufficient cause.

Notice of revocation or renunciation.

206. Reasonable notice must be given of such revocation or renunciation; otherwise the damage thereby resulting to the principal or the agent, as the case may be, must be made good to the one by the other.

Revocation and renunciation may be expressed or implied.

207. Revocation and renunciation may be expressed or may be implied in the conduct of the principal or agent respectively.

Illustration.

A empowers B to let A's house. Afterwards A lets it himself. This is an implied revocation of B's authority.

When termination of agent's authority takes effect as to agent, and as to third persons.

208. The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.

Illustrations.

(*a*) A directs B to sell goods for him, and agrees to give B five per cent commission on the price fetched by the goods. A afterwards, by letter, revokes B's authority. B, after the letter is sent, but before he receives it, sells the goods for 100 rupees. The sale is binding on A, and B is entitled to five rupees as his commission.

(*b*) A, at Madras, by letter, directs B to sell for him some cotton lying in a warehouse in Bombay, and afterwards, by letter, revokes his authority to sell, and directs B to send the cotton to Madras. B, after receiving the second letter, enters into a contract with C, who knows of the first letter, but not of the second, for the sale to him of the cotton. C pays B the money, with which B absconds. C's payment is good as against A.

(*c*) A directs B, his agent, to pay certain money to C. A dies, and D takes out probate to his will. B, after A's death, but before hearing of it, pays the money to C. The payment is good as against D, the executor.

Agent's duty on termination of agency by principal's death or insanity.

209. When an agency is terminated by the principal dying or becoming of unsound mind, the agent is bound to take, on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him.

Termination of sub-agent's authority.

210. The termination of the authority of an agent causes the termination (subject to the rules hereincontained regarding the termination of an agent's authority) of the authority of all sub-agents appointed by him.

Sections 211-212.

Agents' Duty to Principal.

Agent's duty in conducting principal's business.

211. An agent is bound to conduct the business of his principal according to the directions given by the principal, or, in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal, and, if any profit accrues, he must account for it.

Illustrations.

(*a*) A, an agent engaged in carrying on for B a business, in which it is the custom to invest from time to time, at interest, the moneys which may be in hand, omits to make such investment. A must make good to B the interest usually obtained by such investments.

(*b*) B, a broker, in whose business it is not the custom to sell on credit, sells goods of A on credit to C, whose credit at the time was very high. C, before payment, becomes insolvent. B must make good the loss to A.

Skill and diligence required from agent.

212. An agent is bound to conduct the business of the agency with as much skill as is generally possessed by persons engaged in similar business, unless the principal has notice of his want of skill. The agent is always bound to act with reasonable diligence, and to use such skill as he possesses; and to make compensation to his principal in respect of the direct consequences of his own neglect, want of skill or misconduct, but not in respect of loss or damage which are indirectly or remotely caused by such neglect, want of skill or misconduct.

Illustrations.

(*a*) A, a merchant in Calcutta, has an agent, B, in London, to whom a sum of money is paid on A's account, with orders to remit. B retains the money for a considerable time. A, in consequence of not receiving the money, becomes insolvent. B is liable for the money and interest from the day on which it ought to have been paid, according to the usual rate, and for any further direct loss—as, *e.g.*, by variation of rate of exchange—but not further.

(*b*) A, an agent for the sale of goods, having authority to sell on credit, sells to B on credit, without making the proper and usual enquiries as to the solvency of B. B, at the time of such sale, is insolvent. A must make compensation to his principal in respect of any loss thereby sustained.

(*c*) A, an insurance-broker employed by B to effect an insurance on a ship, omits to see that the usual clauses are inserted in the policy. The ship is afterwards lost. In consequence of the omission of the clauses nothing can be recovered from the underwriters. A is bound to make good the loss to B.

Sections 213-216.

(*d*) A, a merchant in England, directs B, his agent at Bombay who accepts the agency, to send him 100 bales of cotton by a certain ship. B, having it in his power to send the cotton, omits to do so. The ship arrives safely in England. Soon after her arrival the price of cotton rises. B is bound to make good to A the profit which he might have made by the 100 bales of cotton at the time the ship arrived, but not any profit he might have made by the subsequent rise.

Agent's accounts.

213. An agent is bound to render proper accounts to his principal on demand.

Agent's duty to communicate with principal.

214. It is the duty of an agent, in cases of difficulty, to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions.

Right of principal when agent deals, on his own account, in business of agency without principal's consent.

215. If an agent deals on his own account in the business of the agency, without first obtaining the consent of his principal and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal may repudiate the transaction, if the case shows either that any material fact has been dishonestly concealed from him by the agent, or that the dealings of the agent have been disadvantageous to him.

Illustrations.

(*a*) A directs B to sell A's estate. B buys the estate for himself in the name of C. A, on discovering that B has bought the estate for himself, may repudiate the sale, if he can show that B has dishonestly concealed any material fact, or that the sale has been disadvantageous to him.

(*b*) A directs B to sell A's estate. B, on looking over the estate before selling it, finds a mine on the estate which is unknown to A. B informs A that he wishes to buy the estate for himself, but conceals the discovery of the mine. A allows B to buy, in ignorance of the existence of the mine. A, on discovering that B knew of the mine at the time he bought the estate, may either repudiate or adopt the sale at his option.

Principal's right to benefit gained by agent dealing on his own account in business of agency.

216. If an agent, without the knowledge of his principal, deals in the business of the agency on his own account instead of on account of his principal, the principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction.

Illustration.

A directs B, his agent, to buy a certain house for him. B tells A it cannot be bought, and buys the house for himself. A may, on discovering that B has bought the house, compel him to sell it to A at the price he gave for it.

Sections 217-222.

Agent's right of retainer out of sums received on principal's account.

217. An agent may retain, out of any sums received on account of the principal in the business of the agency, all moneys due to himself in respect of advances made or expenses properly incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as agent.

Agent's duty to pay sums received for principal.

218. Subject to such deductions, the agent is bound to pay to his principal all sums received on his account.

When agent's remuneration becomes due.

219. In the absence of any special contract, payment for the performance of any act is not due to the agent until the completion of such act; but an agent may detain moneys received by him on account of goods sold, although the whole of the goods consigned to him for sale may not have been sold, or although the sale may not be actually complete.

Agent not entitled to remuneration for business misconducted.

220. An agent who is guilty of misconduct in the business of the agency is not entitled to any remuneration in respect of that part of the business which he has misconducted.

Illustrations.

(*a*) A employs B to recover 1,00,000 rupees from C, and to lay it out on good security. B recovers the 1,00,000 rupees and lays out 90,000 rupees on good security, but lays out 10,000 rupees on security which he ought to have known to be bad, whereby A loses 2,000 rupees. B is entitled to remuneration for recovering the 1,00,000 rupees and for investing the 90,000 rupees. He is not entitled to any remuneration for investing the 10,000 rupees, and he must make good the 2,000 rupees to B.

(*b*) A employs B to recover 1,000 rupees from C. Through B's misconduct the money is not recovered. B is entitled to no remuneration for his services, and must make good the loss.

Agent's lien on principal's property.

221. In the absence of any contract to the contrary, an agent is entitled to retain goods, papers and other property, whether moveable or immoveable, of the principal received by him, until the amount due to himself for commission, disbursements and services in respect of the same has been paid or accounted for to him.

Principal's Duty to Agent.

Agent to be indemnified against consequences of lawful acts.

222. The employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the authority conferred upon him.

Illustrations.

(*a*) B, at Singapur, under instructions from A of Calcutta, contracts with C to deliver certain goods to him. A does not send the goods to B, and C sues B for breach of contract. B informs A of the suit, and A authorizes him to defend the suit. B defends the suit, and is compelled to pay damages and costs, and incurs expenses. A is liable to B for such damages, costs and expenses.

(*b*) B, a broker at Calcutta, by the orders of A, a merchant there, contracts with C for the purchase of 10 casks of oil for A. Afterwards A refuses to receive the oil and C sues B. B informs A, who repudiates the contract altogether. B defends, but unsuccessfully, and has to pay damages and costs and incurs expenses. A is liable to B for such damages, costs and expenses.

Agent to be indemnified against consequences of acts done in good faith.

223. Where one person employs another to do an act, and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act, though it causes an injury to the rights of third persons.

Illustrations.

(*a*) A, a decree-holder and entitled to execution of B's goods, requires the officer of the Court to seize certain goods, representing them to be the goods of B. The officer seizes the goods, and is sued by C, the true owner of the goods. A is liable to indemnify the officer for the sum which he is compelled to pay to C, in consequence of obeying A's directions.

(*b*) B, at the request of A, sells goods in the possession of A, but which A had no right to dispose of. B does not know this, and hands over the proceeds of the sale to A. Afterwards C, the true owner of the goods, sues B and recovers the value of the goods and costs. A is liable to indemnify B for what he has been compelled to pay to C and for B's own expenses.

Non-liability of employer of agent to do a criminal act.

224. Where one person employs another to do an act which is criminal, the employer is not liable to the agent, either upon an express or an implied promise, to indemnify him against the consequences of that act.

Illustrations.

(*a*) A employs B to beat C, and agrees to indemnify him against all consequences of the act. B thereupon beats C, and has to pay damages to C for so doing. A is not liable to indemnify B for those damages.

(*b*) B, the proprietor of a newspaper, publishes, at A's request a libel upon C in the paper, and A agrees to indemnify B against the consequences of the publication, and all costs and damages of any action in respect thereof. B is sued by C and has to pay damages, and also incurs expenses. A is not liable to B upon the indemnity.

Sections 225-228.

225. The principal must make compensation to his agent in respect of injury caused to such agent by the principal's neglect or want of skill.

Compensation to agent for injury caused by principal's neglect.

Illustration.

A employs B as a bricklayer in building a house, and puts up the scaffolding himself. The scaffolding is unskilfully put up, and B is in consequence hurt. A must make compensation to B.

Effect of agency on contract with third persons.

226. Contracts entered into through an agent, and obligations arising from acts done by an agent, may be enforced in the same manner, and will have the same legal consequences, as if the contracts had been entered into and the acts done by the principal in person.

Enforcement and consequences of agent's contracts.

Illustrations.

(*a*) A buys goods from B, knowing that he is an agent for their sale, but not knowing who is the principal. B's principal is the person entitled to claim from A the price of the goods, and A cannot, in a suit by the principal, set-off against that claim a debt due to himself from B.

(*b*) A, being B's agent, with authority to receive money on his behalf, receives from C a sum of money due to B. C is discharged of his obligation to pay the sum in question to B.

227. When an agent does more than he is authorized to do, and when the part of what he does, which is within his authority, can be separated from the part which is beyond his authority, so much only of what he does as is within his authority is binding as between him and his principal.

Principal how far bound, when agent exceeds authority.

Illustration.

A, being owner of a ship and cargo, authorizes B to procure an insurance for 4,000 rupees on the ship. B procures a policy for 4,000 rupees on the ship, and another for the like sum on the cargo. A is bound to pay the premium for the policy on the ship, but not the premium for the policy on the cargo.

228. Where an agent does more than he is authorized to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognize the transaction.

Principal not bound when excess of agent's authority is not separable.

Illustration.

A authorizes B to buy 500 sheep for him. B buys 500 sheep and 200 lambs for one sum of 6,000 rupees. A may repudiate the whole transaction.

Sections 229-232.

Consequences of notice given to agent.

229. Any notice given to or information obtained by the agent, provided it be given or obtained in the course of the business transacted by him for the principal, shall, as between the principal and third parties, have the same legal consequence as if it had been given to or obtained by the principal.

Illustrations.

(*a*) A is employed by B to buy from C certain goods, of which C is the apparent owner, and buys them accordingly. In the course of the treaty for the sale, A learns that the goods really belonged to D, but B is ignorant of that fact. B is not entitled to set-off a debt owing to him from C against the price of the goods.

(*b*) A is employed by B to buy from C goods of which C is the apparent owner. A was, before he was so employed, a servant of C, and then learnt that the goods really belonged to D, but B is ignorant of that fact. In spite of the knowledge of his agent, B may set-off against the price of the goods a debt owing to him from C.

Agent cannot personally enforce, nor be bound by, contracts on behalf of principal. Presumption of contract to contrary.

230. In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.

Such a contract shall be presumed to exist in the following cases :—

(1) where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad.

(2) where the agent does not disclose name of his principal :

(3) where the principal, though disclosed, cannot be sued.

Rights of parties to a contract made by agent not disclosed.

231. If an agent makes a contract with a person who neither knows, nor has reason to suspect, that he is an agent, his principal may require the performance of the contract ; but the other contracting party has, as against the principal, the same rights as he would have had as against the agent if the agent had been principal.

If the principal discloses himself before the contract is completed, the other contracting party may refuse to fulfil the contract, if he can show that, if he had known who was the principal in the contract, or if he had known that the agent was not a principal, he would not have entered into the contract.

Performance of contract with agent supposed to be principal.

232. Where one man makes a contract with another, neither knowing nor having reasonable ground to suspect

that the other is an agent, the principal, if he requires the performance of the contract, can only obtain such performance subject to the rights and obligations subsisting between the agent and the other party to the contract.

Illustration.

A, who owes 500 rupees to B, sells 1,000 rupees' worth of rice to B. A is acting as agent for C in the transaction, but B has no knowledge nor reasonable ground of suspicion that such is the case. C cannot compel B to take the rice without allowing him to set-off A's debt.

Right of person dealing with agent personally liable.

233. In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them, liable.

Illustration.

A enters into a contract with B to sell him 100 bales of cotton, and afterwards discovers that B was acting as agent for C. A may sue either B or C, or both, for the price of the cotton.

Consequence of inducing agent or principal to act on belief that principal or agent will be held exclusively liable.

234. When a person who has made a contract with an agent induces the agent to act upon the belief that the principal only will be held liable, or induces the principal to act upon the belief that the agent only will be held liable, he cannot afterwards hold liable the agent or principal respectively.

Liability of pretended agent.

235. A person untruly representing himself to be the authorized agent of another, and thereby inducing a third person to deal with him as such agent, is liable, if his alleged employer does not ratify his acts, to make compensation to the other in respect of any loss or damage which he has incurred by so dealing.

Person falsely contracting as agent, not entitled to performance.

236. A person with whom a contract has been entered into in the character of agent is not entitled to require the performance of it if he was in reality acting, not as agent, but on his own account.

Liability of principal inducing belief that agent's unauthorized acts were authorized.

237. When an agent has, without authority, done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations if he has by his words or conduct induced such third persons to believe that such acts and obligations were within the scope of the agent's authority.

Illustrations.

(*a*) A consigns goods to B for sale, and gives him instructions not to sell under a fixed price. C, being ignorant of B's instructions, enters

into a contract with B to buy the goods at a price lower than the reserved price. A is bound by the contract.

(*b*) A entrusts B with negotiable instruments endorsed in blank. B sells them to C in violation of private orders from A. The sale is good.

Effect, on agreement, of misrepresentation or fraud by agent.

238. Misrepresentations made, or frauds committed, by agents acting in the course of their business for their principals, have the same effect on agreements made by such agents as if such misrepresentations or frauds had been made or committed by the principals; but misrepresentations made, or frauds committed, by agents, in matters which do not fall within their authority, do not affect their principals.

Illustrations.

(*a*) A, being B's agent for the sale of goods, induces C to buy them by a misrepresentation, which he was not authorized by B to make. The contract is voidable, as between B and C, at the option of C.

(*b*) A, the captain of B's ship, signs bills of lading without having received on board the goods mentioned therein. The bills of lading are void as between B and the pretended consignor.

CHAPTER XI. *

* Chapter XI was repealed by section 78 of Act VI of 1936.

SCHEDULE.

ENACTMENTS REPEALED.

Statutes.

Number and year of Statute	Title	Extent of repeal
Stat. 29 Car. II, cap. 3	An Act for prevention of Frauds and Perjuries.	Sections 1, 2, 3, 4 and 17.
Stat. 11 and 12 Vict., cap. 21.	To consolidate and amend the law relating to insolvent debtors in India.	Section 42.
Act XIII of 1840 ...	An Act for the amendment of the law regarding factors, by extending to the territories of the East India Company, in cases governed by English law, the provisions of the Statute 4 Geo. IV, chap. 83, as altered and amended by the Statute 6 Geo. IV, chap. 94.	The whole.
Act XIV of 1840 ...	An Act for rendering a written memorandum necessary to the validity of certain promises and engagements, by extending to the territories of the East India Company, in cases governed by English law, the provisions of the Statute 9 Geo. IV, chap. 14.	The whole.
Act XX of 1844 ...	An Act to amend the law relating to Advances *bona fide* made to Agents interested with goods, by extending to the territories of the East India Company, in cases governed by English law, the provisions of the Statute 5 and 6 Victoria, c. 39, as altered by this Act.	The whole.
Act XXI of 1848 ...	An Act for avoiding Wagers	The whole.
Act V of 1866 ...	An Act to provide a summary procedure on bills of exchange, and to amend in certain respects the commercial law of British India.	Sections 9 and 10.
Act XV of 1866 ...	An Act to amend the law of Partnership in India.	The whole.
Act VIII of 1867 ...	An Act to amend the law relating to Horse racing in India.	The whole.

ACT No. XV OF 1872.

Notification by the Government of India, Foreign Department, Judicial No. 176, dated Fort William, the 31st December 1875.

The Governor-General in Council is pleased to direct that "The Indian Christian Marriage Act, 1872," with the exception of the portions thereof specified in the Schedule hereto annexed, shall, on and from the first day of January 1876, be in force throughout the Territories of Mysore, so far as regards marriages between persons one of whom is a Native Christian subject of Mysore, and neither of whom is a Christian British subject.

2. The expression "Local Government," wherever it occurs in the said Act, shall be deemed to mean the Chief Commissioner of Mysore.*

SCHEDULE.

Section 1.

Section 8.

Section 9, the words "or (so far as regards any Native State) the Governor-General in Council."

Sections 28 to 36, inclusive.

Section 43.

Sections 45 and 46, those expressions which refer to the jurisdiction of a Judge of the High Court.

Section 47.

Section 48, the last three clauses and such expressions as relate to the jurisdiction of a Judge of the High Court.

Sections 54 to 56, inclusive.

Section 84.

Section 86.

* This is virtually superseded by Notification of the Government of Mysore No. 153, dated the 2nd September 1881, according to which the expression "Local Government" is to denote "The Government of His Highness the Maharaja of Mysore".

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ACT XV OF 1872.

(RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL ON THE 18TH JULY 1872.)

An Act to consolidate and amend the law relating to the solemnization in India of the marriages of Christians.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to the solemnization in India of the marriages of persons professing the Christian religion; it is hereby enacted as follows:—

PRELIMINARY.

1. [*Short title and extent.*] *Omitted as directed by Notification No.* 176—*J., dated the* 31*st December* 1875.

Enactments repealed.

2. The enactments specified in the fifth schedule hereto annexed are repealed, but not so as to invalidate any marriage confirmed by, or solemnized under, any such enactment.

And all appointments made, licenses granted, consents given, certificates issued, and other things duly done under any such enactment shall be deemed to be respectively made, granted, given, issued and done under this Act.

[.... ....]

Interpretation-clause.

3. In this Act, unless there is something repugnant in the subject or context—

"Church of England" and "Anglican" mean and apply to the Church of England as by law established;

"Church of Scotland" means the Church of Scotland as by law established.

"Church of Rome" and "Roman Catholic" mean and apply to the Church which regards the Pope of Rome as its spiritual head;

"Church" includes any chapel or other building generally used for Public Christian worship;

"Minor" means a person who has not completed the age of twenty-one years, and who is not a widower or a widow;

"Native State" means the territories of any Native Prince or State in alliance with Her Majesty;

[ ] This was repealed by Section 2 of Act III of 1900.

Sections 4—7.

The expression "Christians" means persons professing the Christian religion;

And the expression "Native Christians" includes the Christian descendants of Natives of India converted to Christianity, as well as such converts.

PART I.

THE PERSONS BY WHOM MARRIAGES MAY BE SOLEMNIZED.

Marriages to be solemnized according to Act.

4. Every marriage between persons, one or both of whom is a Christian or are Christians, shall be solemnized in accordance with the provisions of the next following section; and any such marriage solemnized otherwise than in accordance with such provisions shall be void.

5. Marriages may be solemnized in India—

Persons by whom marriages may be solemnized.

(1) by any person who has received episcopal ordination, provided that the marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of which he is a Minister;

(2) by any Clergyman of the Church of Scotland, provided that such marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of Scotland;

(3) by any Minister of Religion licensed under this Act to solemnize marriages;

(4) by, or in the presence of, a Marriage Registrar appointed under this Act;

(5) by any person licensed under this Act to grant certificates of marriage between Native Christians.

Grant and revocation of licenses to solemnize marriages.

6. The Local Government may grant licenses to Ministers of Religion to solemnize marriages within the territories under its administration, and may revoke such licenses.

Marriage Registrars.

7. The Local Government may appoint one or more Christians, either by name or as holding any office for the time being, to be the Marriage Registrar or Marriage Registrars for any district subject to its administration.

Senior Marriage Registrar.

Where there are more Marriage Registrars than one in any district, the Local Government shall appoint one of them to be the Senior Marriage Registrar.

Sections 8—11.

When there is only one Marriage Registrar in a district, and such Registrar is absent from such district, or ill, or when his office is temporarily vacant, the Magistrate of the District shall act as, and be, Marriage Registrar thereof during such absence, illness or temporary vacancy. Magistrate when to be Marriage Registrar.

8. [*Marriage Registrars in Native States.*] *Omitted as directed by Notification No.* 176—*J., dated the* 31*st December* 1875.

9. The Local Government [a] may grant a license to any Christian, either by name or as holding any office for the time being, authorizing him to grant certificates of marriage between Native Christians. Licensing of persons to grant certificates of marriage between Native Christians.

Any such license may be revoked by the authority by which it was granted, and every such grant or revocation shall be notified in the official Gazette.

PART II.

TIME AND PLACE AT WHICH MARRIAGES MAY BE SOLEMNIZED.

10. Every marriage under this Act shall be solemnized between the hours of six in the morning and seven in the evening : Time of solemnizing marriage.

Provided that nothing in this section shall apply to:—

(1) a Clergyman of the Church of England solemnizing a marriage under a special license permitting him to do so at any hour other than between six in the morning and seven in the evening, under the hand and seal of the Anglican Bishop of the Diocese or his Commissary, or Exceptions.

(2) a Clergyman of the Church of Rome solemnizing a marriage between the hours of seven in the evening and six in the morning, when he has received a general or special license in that behalf from the Roman Catholic Bishop of the Diocese or Vicariate in which such marriage is so solemnized, or from such person as the same Bishop has authorized to grant such license.

11. No Clergyman of the Church of England shall solemnize a marriage in any place other than a church, Place for solemnizing marriage.

unless there is no church within five miles' distance by the shortest road from such place, or

[a] Certain words in Section 9 have been omitted as directed by Notification No. 176—J., dated the 31st December 1875.

unless he has received a special license authorizing him to do so under the hand and seal of the Anglican Bishop of the Diocese or his Commissary.

Fee for special license.

For such special license, the Registrar of the Diocese may charge such additional fee as the said Bishop from time to time authorizes.

PART III.

MARRIAGES SOLEMNIZED BY MINISTERS OF RELIGION LICENSED UNDER THIS ACT.

Notice of intended marriage.

12. Whenever a marriage is intended to be solemnized by a Minister of Religion licensed to solemnize marriages under this Act—

one of the persons intending marriage shall give notice in writing, according to the form contained in the first schedule hereto annexed, or to the like effect, to the Minister of Religion whom he or she desires to solemnize the marriage, and shall state therein—

(*a*) the name and surname, and the profession or condition, of each of the persons intending marriage,

(*b*) the dwelling-place of each of them,

(*c*) the time during which each has dwelt there, and

(*d*) the church or private dwelling in which the marriage is to be solemnized:

Provided that, if either of such persons has dwelt in the place mentioned in the notice during more than one month, it may be stated therein that he or she has dwelt there one month and upwards.

Publication of such notice.

13. If the persons intending marriage desire it to be solemnized in a particular church, and if the Minister of Religion to whom such notice has been delivered be entitled to officiate therein, he shall cause the notice to be affixed in some conspicuous part of such church.

Return or transfer of notice.

But if he is not entitled to officiate as a Minister in such church, he shall, at his opinion, either return the notice to the person who delivered it to him, or deliver it to some other Minister entitled to officiate therein, who shall thereupon cause the notice to be affixed as aforesaid.

Sections 14—18.

Notice of intended marriage in private dwelling.

14. If it be intended that the marriage shall be solemnized in a private dwelling, the Minister of Religion, on receiving the notice prescribed in section 12, shall forward it to the Marriage Registrar of the District, who shall affix the same to some conspicuous place in his own office.

Sending copy of notice to Marriage Registrar when one party is a minor.

15. When one of the persons intending marriage is a minor, every Minister receiving such notice shall, unless within twenty-four hours after its receipt he returns the same under the provisions of section 13, send by the post or otherwise, a copy of such notice to the Marriage Registrar of the District, or, if there be more than one Registrar of such district, to the Senior Marriage Registrar.

Procedure on receipt of notice.

16. The Marriage Registrar or Senior Marriage Registrar, as the case may be, on receiving any such notice, shall affix it to some conspicuous place in his own office, and the latter shall further cause a copy of the said notice to be sent to each of the other Marriage Registrars in the same district, who shall likewise publish the same in the manner above directed.

Issue of certificate, notice given and declaration made.

17. Any Minister of Religion consenting or intending to solemnize any such marriage as aforesaid shall, on being required so to do by or on behalf of the person by whom the notice was given, and upon one of the persons intending marriage making the declaration hereinafter required, issue under his hand a certificate of such notice having been given and of such declaration having been made;

Provided—

Proviso.

(1) that no such certificate shall be issued until the expiration of four days after the date of the receipt of the notice by such Minister;

(2) that no lawful impediment be shown to his satisfaction why such certificate should not issue; and

(3) that the issue of such certificate has not been forbidden, in manner hereafter mentioned, by any person authorized in that behalf.

Declaration before issue of certificate.

18. The certificate mentioned in section 17 shall not be issued until one of the persons intending marriage has appeared personally before the Minister and made a solemn declaration—

(*a*) that he or she believes that there is not any impediment of kindred or affinity, or other lawful hindrance to the said marriage,

and when either or both of the parties is or are a minor or minors,

(*b*) that the consent or consents required by law has or have been obtained thereto, or that there is no person resident in India having authority to give such consent, as the case may be.

Consent of father, or guardian or mother.

19. The father, if living, of any minor, or, if the father be dead, the guardian of the person of such minor, and, in case there be no such guardian, then the mother of such minor, may give consent to the minor's marriage,

and such consent is hereby required for the same marriage, unless no person authorized to give such consent be resident in India.

Power to prohibit by notice issue of certificate.

20. Every person whose consent to a marriage is required under section 19 is hereby authorized to prohibit the issue of the certificate by any Minister, at any time before the issue of the same, by notice in writing to such Minister, subscribed by the person so authorized with his or her name and place of abode and position with respect to either of the persons intending marriage, by reason of which he or she is so authorized as aforesaid.

Procedure on receipt of notice.

21. If any such notice be received by such Minister, he shall not issue his certificate and shall not solemnize the said marriage until he has examined into the matter of the said prohibition, and is satisfied that the person prohibiting the marriage has no lawful authority for such prohibition,

or until the said notice is withdrawn by the person who gave it.

Issue of certificate in case of minority.

22. When either of the persons intending marriage is a minor, and the Minister is not satisfied that the consent of the person whose consent to such marriage is required by section 19, has been obtained, such Minister shall not issue such certificate until the expiration of fourteen days after the receipt by him of the notice of marriage.

Issue of certificate to Native Christians.

23. When any Native Christian about to be married takes a notice of marriage to a Minister of Religion, or applies for a certificate from such Minister under section 17, such Minister shall, before issuing the certificate, ascertain whether such Native Christian is cognizant of the purport and effect of the said notice or certificate, as the case may be, and, if not, shall translate or cause to be

translated the notice or certificate to such Native Christian into some language which he understands.

Form of certificate.

24. The certificate to be issued by such Minister shall be in the form contained in the second schedule hereto annexed, or to the like effect.

Solemnization of marriage.

25. After the issue of the certificate by the Minister, marriage may be solemnized between the persons therein described according to such form or ceremony as the Minister thinks fit to adopt:

Provided that the marriage be solemnized in the presence of at least two witnesses besides the Minister.

Certificate void if marriage not solemnized within two months.

26. Whenever a marriage is not solemnized within two months after the date of the certificate issued by such Minister as aforesaid, such certificate and all proceedings (if any) thereon shall be void,

and no person shall proceed to solemnize the said marriage until new notice has been given and a certificate thereof issued in manner aforesaid.

PART IV.

REGISTRATION OF MARRIAGES SOLEMNIZED BY MINISTERS OF RELIGION.

Marriages when to be registered.

27. All marriages hereafter solemnized in India between persons one or both of whom professes or profess the Christian religion, except marriages solemnized under Part V or Part VI of this Act, shall be registered in manner hereinafter prescribed.

28 to 36. [*Registration of Marriages of persons not being Native Christians.*] *Omitted as directed by Notification No.* 176—*J., dated the* 31*st December* 1875.

Registration of marriages between Native Christians under Part I or Part III. Custody and disposal of register-book.

37. When any marriage between Native Christians is solemnized under Part I or Part III of this Act, the person solemnizing the same shall [a] register the marriage in a separate register-book, and shall keep it safely until it is filled, or, if he leave the district in which he solemnized the marriage before the said book is filled, shall make over the same to the person succeeding to his duties in the said district.

[a] The words "instead of proceeding in the manner provided by sections 28 to 36, both inclusive," have been omitted, as a consequence of the omission of sections 28 to 36, *supra*.

Sections 38—40.

Whoever has the control of the book at the time when it is filled shall send it to the Marriage Registrar of the district, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar, who shall send it to the Secretary to the Local Government to be kept by him with the records of his office.

PART V.

MARRIAGES SOLEMNIZED BY, OR IN THE PRESENCE OF, A MARRIAGE REGISTRAR.

Notice of intended marriage before Marriage Registrar.

38. When a marriage is intended to be solemnized by, or in the presence of, a Marriage Registrar, one of the parties to such marriage shall give notice in writing, in the form contained in the first schedule hereto annexed, or to the like effect, to any Marriage Registrar of the district within which the parties have dwelt;

or, if the parties dwell in different districts, shall give the like notice to a Marriage Registrar of each district,

and shall state therein the name and surname, and the profession or condition, of each of the parties intending marriage, the dwelling-place of each of them, the time during which each has dwelt therein, and the place at which the marriage is to be solemnized:

Provided that, if either party has dwelt in the place stated in the notice for more than one month, it may be stated therein that he or she has dwelt there one month and upwards.

Publication of notice.

39. Every Marriage Registrar shall, on receiving any such notice, cause a copy thereof to be affixed in some conspicuous place in his own office.

When one of the parties intending marriage is a minor, every Marriage Registrar shall, within twenty-four hours after the receipt by him of the notice of such marriage, send, by post or otherwise, a copy of such notice to each of the other Marriage Registrars (if any) in the same district, who shall likewise affix the copy in some conspicuous place in his own office.

Notice to be filed and copy entered in Marriage Notice Book.

40. The Marriage Registrar shall file all such notices and keep them with the records of his office,

Sections 41—43.

and shall also forthwith enter a true copy of all such notices in a book to be furnished to him for that purpose by the Local Government, and to be called the "Marriage Notice Book";

and the Marriage Notice Book shall be open at all reasonable times, without fee, to all persons desirous of inspecting the same.

Certificate of Notice given and oath made.

41. If the party by whom the notice was given requests the Marriage Registrar to issue the certificate next hereinafter mentioned, and if one of the parties intending marriage has made oath as hereinafter required, the Marriage Registrar shall issue under his hand a certificate of such notice having been given and of such oath having been made:

Proviso.

Provided—

that no lawful impediment be shown to his satisfaction why such certificate should not issue;

that the issue of such certificate has not been forbidden, in manner hereinafter mentioned, by any person authorized in that behalf by this Act;

that four days after the receipt of the notice have expired, and further,

that where, by such oath, it appears that one of the parties intending marriage is a minor, fourteen days after the entry of such notice have expired.

Oath before issue of certificate.

42. The certificate mentioned in section 41 shall not be issued by any Marriage Registrar, until one of the parties intending marriage appears personally before such Marriage Registrar, and makes oath—

(*a*) that he or she believes that there is not any impediment of kindred or affinity, or other lawful hindrance, to the said marriage, and

(*b*) that both the parties have, or (where they have dwelt in the districts of different Marriage Registrars) that the party making such oath has, had their, his or her usual place of abode within the district of such Marriage Registrar,

and, where either or each of the parties is a minor,

(*c*) that the consent or consents to such marriage required by law has or have been obtained thereto, or that there is no person resident in India authorized to give such consent, as the case may be.

43. [*Petition to High Court to order certificate in less than fourteen days.*] *Omitted as directed by Notification No.* 176—*J., dated the* 31*st December* 1875.

Sections 44—46.

Consent of father or guardian.

44. The provisions of section 19 apply to every marriage under this Part, either of the parties to which is a minor;

Protest against issue of certificate.

and any person whose consent to such marriage would be required thereunder may enter a protest against the issue of the Marriage Registrar's certificate, by writing, at any time before the issue of such certificate, the word "forbidden" opposite to the entry of the notice of such intended marriage in the Marriage Notice Book, and by subscribing thereto his or her name and place of abode, and his or her position with respect to either of the parties, by reason of which he or she is so authorized.

Effect of protest.

When such protest has been entered, no certificate shall issue until the Marriage Registrar has examined into the matter of the protest, and is satisfied that it ought not to obstruct the issue of the certificate for the said marriage, or until the protest be withdrawn by the person who entered it.

Petition where person whose consent is necessary is insane, or unjustly withholds consent.

45. If any person whose consent is necessary to any marriage under this Part is of unsound mind,

or if any such person (other than the father) without just cause withholds his consent to the marriage,

the parties intending marriage may apply by petition [a] to the District Judge;

Procedure on petition.

and the said [b] District Judge [c] may examine the allegations of the petition in a summary way:

And, if upon examination such marriage appears proper, such [b] District Judge [c] shall declare the marriage to be a proper marriage.

Such declaration shall be as effectual as if the person whose consent was needed had consented to the marriage;

and, if he has forbidden the issue of the Marriage Registrar's certificate, such certificate shall be issued and the like proceedings may be had under this Part in relation to the marriage as if the issue of such certificate had not been forbidden.

Petition when Marriage Registrar refuses certificate.

46. Whenever a Marriage Registrar refuses to issue a certificate under this Part, either of the parties intending marriage may apply by petition [d] to the District Judge.

[a], [b], [c], [d] Those expressions in Sections 45 and 46 which refer to the jurisdiction of a Judge of the High Court have been omitted as directed by Notification No. 176—J., dated the 31st December 1875.

Sections 47—49.

Procedure on petition.

The said [a] District Judge [b] may examine the allegations of the petition in a summary way, and shall decide thereon.

The decision of such [c] District Judge shall be final, and the Marriage Registrar to whom the application for the issue of a certificate was originally made shall proceed in accordance therewith.

47. [*Petition when Marriage Registrar in Native State refuses certificate.*] *Omitted as directed by Notification No.* 176—*J., dated the* 31*st December* 1875.

Petition when Registrar doubts authority of person forbidding.

48. Whenever a Marriage Registrar, acting under the provisions of section 44, is not satisfied that the person forbidding the issue of the certificate is authorized by law so to do, the said Marriage Registrar shall apply by petition [a] to the District Judge.

Procedure on petition.

The said petition shall state all the circumstances of the case, and pray for the order and direction of the Court concerning the same,

and the said [b] District Judge [c] shall examine into the allegations of the petition and the circumstances of the case;

and if, upon such examination, it appears that the person forbidding the issue of such certificate is not authorized by law so to do, such [b] District Judge [c] shall declare that the person forbidding the issue of such certificate is not authorized as aforesaid,

and thereupon such certificate shall be issued, and the like proceedings may be had in relation to such marriage as if the issue had not been forbidden. (d)

Liability for frivolous protest against issue of certificate.

49. Every person entering a protest with the Marriage Registrar, under this Part, against the issue of any certificate, on grounds which such Marriage Registrar, under section 44, or [c] the District Judge, under sections 45 or 46, declares to be frivolous and such as ought not to obstruct the issue of the certificate, shall be liable for the costs of all proceedings in relation thereto and for damages, to be recovered by suit by the person against whose marriage such protest was entered.

[a], [b], [c] These expressions in Section 46.

[a], [b], [c], [d] Such expressions in Section 48 as relate to the jurisdiction of a Judge of the High Court, and the last three clauses of the section, have been omitted as directed by Notification No. 176—J., dated the 31st December 1875.

[e] The words "or a Judge of the High Court" in Section 49 have been omitted in consequence of the omission from previous Sections of all expressions relating to the jurisdiction of a Judge of the High Court.

Sections 50—53

Form of certificate.

50. The certificate to be issued by the Marriage Registrar under the provisions of section 41 shall be in the form contained in the second schedule to this Act annexed or to the like effect,

and the Local Government shall furnish to every Marriage Registrar a sufficient number of forms of certificate.

Solemnization of marriage after issue of certificate.

51. After the issue of the certificate of the Marriage Registrar,

or, where notice is required to be given under this Act to the Marriage Registrars for different districts, after the issue of the certificates of the Marriage Registrars for such districts,

marriage may, if there be no lawful impediment to the marriage of the parties described in such certificates, or certification, be solemnized between them, according to such form and ceremony as they think fit to adopt.

But every such marriage shall be solemnized in the presence of some Marriage Registrar (to whom shall be delivered such certificate or certificates as aforesaid), and of two or more credible witnesses besides the Marriage Registrar.

And in some part of the ceremony each of the parties shall declare as follows, or to the like effect:—

"I do solemnly declare that I know not of any lawful impediment why I, *A. B.*, may not be joined in matrimony to *C. D.*"

And each of the parties shall say to the other as follows, or to the like effect:—"I call upon these persons here present to witness that I, *A. B.*, do take thee, *C. D.*, to be my lawful wedded wife [*or* husband]."

When marriage not had within two months after notice, new notice required.

52. Whenever a marriage is not solemnized within two months after the copy of the notice has been entered by the Marriage Registrar, as required by section 40, the notice and the certificate, if any, issued thereupon, and all other proceedings thereupon, shall be void;

and no person shall proceed to solemnize the marriage, nor shall any Marriage Registrar enter the same, until new notice has been given, and entry made, and certificate thereof given, at the time and in the manner aforesaid.

Marriage Registrar may ask for particulars to be registered.

53. A Marriage Registrar before whom any marriage is solemnized under this Part may ask of the persons to be married the several particulars required to be registered touching such marriage.

Sections 54—60.

54. [*Registration of marriages solemnized under Part V.*] *Omitted as directed by Notification No.* 176—*J., dated the* 31*st December* 1875.

55. [*Certificates to be sent monthly to Registrar-General and Custody of Register-book.*] *Omitted as directed by Notification No.* 176—*J., dated the* 31*st December* 1875.

56. [*Officers to whom Registrars in Native States shall send certificates.*] *Omitted as directed by Notification No.* 176—*J., dated the* 31*st December* 1875.

Registrars to ascertain that notice and certificate are understood by Native Christians.

57. When any Native Christian about to be married gives a notice of marriage, or applies for a certificate from a Marriage Registrar, such Marriage Registrar shall ascertain whether the said Native Christian understands the English language, and, if he does not, the Marriage Registrar shall translate, or cause to be translated, such notice or certificate, or both of them, as the case may be, to such Native Christian into a language which he understands;

or the Marriage Registrar shall otherwise ascertain whether the Native Christian is cognizant of the purport and effect of the said notice and certificate.

Native Christians to be made to understand declarations.

58. When any Native Christian is married under the provisions of this Part, the person solemnizing the marriage shall ascertain whether such Native Christian understands the English language, and, if he does not, the person solemnizing the marriage shall, at the time of the solemnization, translate, or cause to be translated, to such Native Christian, into a language which he understands, the declarations made at such marriage in accordance with the provisions of this Act.

Registration of marriages between Native Christians.

59. The registration of marriages between Native Christians under this Part shall be made in conformity with the rules laid down in section 37 (so far as they are applicable), and not otherwise.

PART VI.

Marriage of Native Christians.

On what conditions marriages of Native Christians may be certified.

60. Every marriage between Native Christians applying for a certificate shall, without the preliminary notice required under Part III, be certified under this Part, if the following conditions be fulfilled, and not otherwise:—

(1) the age of the man intending to be married shall exceed sixteen years, and the age of the woman intending o be married shall exceed thirteen years;

Sections 61—63.

(2) neither of the persons intending to be married shall have a wife or husband still living;

(3) in the presence of a person licensed under section 9, and of at least two credible witnesses other than such person, each of the parties shall say to the other—

"I call upon these persons here present to witness that I, *A.B.*, in the presence of Almighty God, and in the name of our Lord Jesus Christ, do take thee, *C. D.*, to be my lawful wedded wife [*or husband*]" or words to the like effect:

Provided that no marriage shall be certified under this Part when either of the parties intending to be married has not completed his or her eighteenth year, unless such consent as is mentioned in section 19 has been given to the intended marriage, or unless it appears that there is no person living authorized to give such consent.

Grant of certificate.

61. When, in respect to any marriage solemnized under this Part, the conditions prescribed in section 60 have been fulfilled, the person licensed as aforesaid, in whose presence the said declaration has been made, shall, on the application of either of the parties to such marriage, and on the payment of a fee of four annas, grant a certificate of the marriage.

The certificate shall be signed by such licensed person, and shall be received in any suit touching the validity of such marriage as conclusive proof of its having been performed.

Register-book to be kept.

62. A register-book of all marriages of which certificates are granted under section 61 shall be kept by the person granting such certificates in his own vernacular language.

Such register-book shall be kept according to such form as the Local Government from time to time prescribes in this behalf, and true extracts therefrom duly authenticated shall be deposited at such places as the Local Government directs.

Searches in register-book and copies of entries.

63. Every person licensed under this Act to grant certificates of marriage, and keeping a marriage-register-book under section 62, shall, at all reasonable times, allow search to be made in such book, and shall, on payment of the proper fee, give a copy, certified under his hand, of an entry therein.

Sections 64—68.

Books in which marriages of Native Christians under Part I or Part III are registered.

64. The provisions of sections 62 and 63, as to the form of the register-book, depositing extracts therefrom, allowing searches thereof, and giving copies of the entries therein, shall, *mutatis mutandis*, apply to the books kept under section 37.

Part VI not to apply to Roman Catholics. Saving of certain marriages.

65. This Part of this Act, except so much of sections 62 and 63 as are referred to in section 64, shall not apply to marriages between Roman Catholics. But nothing herein contained shall invalidate any marriage celebrated between Roman Catholics under the provisions of Part V of Act No. XXV of 1864, previous to the twenty-third day of February, 1865.

PART VII.

PENALTIES.

False oath, declaration, notice or certificate for procuring marriage.

66. Whoever for the purpose of procuring any marriage, intentionally makes any false oath or signs any false notice or certificate required by this Act, shall be deemed guilty of the offence described in section 193 of the Indian Penal Code.

Forbidding by false personation, issue of certificate by Marriage Registrar.

67. Whoever forbids the issue, by a Marriage Registrar, of a certificate, by falsely representing himself to be a person whose consent to the marriage is required by law, knowing or believing such representation to be false, or not having reason to believe it to be true, shall be deemed guilty of the offence described in section 205 of the Indian Penal Code.

Solemnizing marriage without due authority.

68. Whoever, not being authorized under this Act, to solemnize a marriage in the absence of a Marriage Registrar of the district in which such marriage is solemnized, knowingly solemnizes a marriage between persons one or both of whom is or are a Christian or Christians, shall be punished with imprisonment which may extend to ten years, or (in lieu of a sentence of imprisonment for seven years or upwards) with transportation for a term of not less than seven years, and not exceeding ten years,

or, if the offender be an European or American, with penal servitude according to the provisions of Act XXIV of 1855 (to *substitute penal servitude for the punishment of*

transportation in respect of European and American convicts and to amend the law relating to the removal of such convicts),

and shall also be liable to fine.

So lemnizing marriage out of proper time, or without witnesses.

69. Whoever knowingly and wilfully solemnizes a marriage between persons one or both of whom is or are a Christian or Christians at any time other than between the hours of six in the morning and seven in the evening, or in the absence of at least two credible witnesses other than the person solemnizing the marriage, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

Saving of marriages solemnized under special license.

This section does not apply to marriages solemnized under special licenses granted by the Anglican Bishop of the Diocese or by his Commissary, not to marriages performed between the hours of seven in the evening and six in the morning by a Clergyman of the Church of Rome, when he has received the general or special license in that behalf mentioned in section 10.

Solemnizing without notice or within fourteen days after notice, marriage with minor.

70. Any Minister of Religion licensed to solemnize marriages under this Act, who, without a notice in writing, or, when one of the parties to the marriage is a minor, and the required consent of the parents or guardians to such marriage has not been obtained, within fourteen days after the receipt by him of notice of such marriage, knowingly and wilfully solemnizes a marriage under Part III, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

Issuing certificate, or marrying, without publication of notice.

71. A Marriage Registrar under this Act, who commits any of the following offences :—

(1) knowingly and wilfully issues any certificate for marriage, or solemnizes any marriage, without publishing the notice of such marriage as directed by this Act ;

Marrying after expiry of certificate.

(2) after the expiration of two months from the issue by him of a certificate in respect of any marriage, solemnizes such marriage ;

Solemnizing marriage with minor within fourteen days, without authority of Court, or without sending copy of notice.

(3) solemnizes, without an order of a competent Court authorizing him to do so, any marriage, when one of the parties is a minor, before the expiration of fourteen days after the receipt of the notice of such marriage, or without sending, by the post or otherwise, a copy of such notice to the Senior Marriage Registrar of the District if there be more Marriage Registrars of the District than one, nd if he hi mself be not the Senior Marriage Registrar ;

Sections 72-73.

(4) issues any certificate the issue of which has been prohibited, as in this Act provided, by any person authorized to prohibit the issue thereof, Issuing certificate against authorised prohibition.

shall be punished with imprisonment for a term which may extend to five years, and shall also be liable to fine.

72. Any marriage Registrar knowingly and wilfully issuing any certificate for marriage after the expiration of three months after the notice has been entered by him as aforesaid, Issuing certificate after expiry of notice, or, in case of minor within fourteen days after notice, or against authorized prohibition.

or knowingly and wilfully issuing, without the order of a competent Court authorizing him so to do, any certificate for marriage, where one of the parties intending marriage is a minor, before the expiration of fourteen days after the entry of such notice, or any certificate the issue of which has been forbidden as aforesaid by any person authorized in this behalf,

shall be deemed to have committed an offence under section 166 of the Indian Penal Code.

73. Whoever, being authorized under this Act to solemnize a marriage. Persons authorized to solemnize marriage (other than Clergy of Churches of England Scotland, or Rome).

and not being a Clergyman of the Church of England solemnizing a marriage after due publication of banns, or under a license from the Anglican Bishop of the Diocese or a Surrogate duly authorized in that behalf,

or, not being a Clergyman of the Church of Scotland solemnizing a marriage according to the rules, rites, ceremonies and customs of that church,

or, not being a Clergyman of the Church of Rome, solmnizing a marriage according to the rites, rules, ceremonies and customs of that church,

knowingly and wilfully issues any certificate for marriage under this Act, or solemnizes any marriage between such persons as aforesaid, without publishing, or causing to be affixed, the notice of such marriage as directed in Part III of this Act, or after the expiration of two months after the certificate has been issued by him; Issuing certificate, or marrying, without publishing notice or, after expiry of certificate.

or knowingly and wilfully issues any certificate for marriage, or solemnizes a marriage between such persons when one of the persons intending marriage is a minor, before the expiration of fourteen days after the receipt of notice of such marriage, or without sending, by the post or otherwise, a copy of such notice to the Marriage Registrar, Issuing certificate for, or solemnizing marriage with minor, within fourteen days after notice.

or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar of the District;

Issuing certificate authorizedly forbidden.

or knowingly and wilfully issues any certificate the issue of which has been forbidden, under this Act, by any person authorized to forbid the issue;

Solemnizing marriage authorizedly forbidden.

or knowingly and wilfully solemnizes any marriage forbidden by any person authorized to forbid the same;

shall be punished with imprisonment for a term which may extend to four years, and shall also be liable to fine.

Unlicensed person granting certificate pretending to be licensed.

74. Whoever, not being licensed to grant a certificate of marriage under Part VI of this Act, grants such certificate intending thereby to make it appear that he is so licensed, shall be punished with imprisonment for a term which may extend to five years, and shall also be liable to fine.

Destroying or falsifying register-books.

75. Whoever, by himself or another, wilfully destroys or injures any register-book or the counterfoil certificates thereof, or any part thereof, or any authenticated extract therefrom,

or falsely makes or counterfeits any part of such register-book or counterfoil certificates,

or wilfully inserts any false entry in any such register, book or counterfoil certificate or authenticated extract,

shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Limitation of prosecutions under Act.

76. The prosecution for every offence punishable under this Act shall be commenced within two years after the offence is committed.

PART VIII.

MISCELLANEOUS.

What matters need not be proved in respect of marriage in accordance with Act.

77. Whenever any marriage has been solemnized in accordance with the provisions of sections 4 and 5, it shall not be void merely on account of any irregularity in respect of any of the following matters, namely:—

(1) any statement made in regard to the dwelling of the persons married, or to the consent of any person whose consent to such marriage is required by law;

(2) the notice of the marriage;

(3) the certificate or translation thereof;

(4) the time and place at which the marriage has been solemnized;

Sections 78—81.

(5) the registration of the marriage.

Correction of errors.

78. Every person charged with the duty of registering any marriage, who discovers any error in the form or substance of any such entry, may, within one month next after the discovery of such error, in the presence of the persons married, or, in case of their death or absence, in the presence of two other credible witnesses, correct the error by entry in the margin, without any alteration of the original entry, and shall sign the marginal entry, and add thereto the date of such correction, and such person shall make the like marginal entry in the certificate thereof.

And every entry made under this section shall be attested by the witnesses in whose presence it was made.

And, in case such certificate has been already sent to the Secretary to the Local Government, such person shall make and send in like manner a separate certificate of the original erroneous entry, and of the marginal correction therein made.

Searches and copies of entries.

79. Every person solemnizing a marriage under this Act, and hereby required to register the same,

and every Marriage Registrar or Secretary to the Local Government having the custody for the time being of any register of marriages, or of any certificate, or duplicate or copies of certificate, under this Act,

shall, on payment of the proper fees, at all reasonable times, allow searches to be made in such register, or for such certificate, or duplicate or copies, and give a copy under his hand of any entry in the same.

Certified copy of entry in marriage-register, etc., to be evidence.

80. Every certified copy, purporting to be signed by the person entrusted under this Act with the custody of any marriage—register or certificate, or duplicate, required to be kept or delivered under this Act, of any entry of a marriage in such register, or of any such certificate or duplicate, shall be received as evidence of the marriage purporting to be so entered, or of the facts purporting to be so certified therein, without further proof of such register or certificate or duplicate, or of any entry therein, respectively, or of such copy.

Sending certificates of certain marriages to Secretary of State for India.

81. The Secretary to the Local Government and the officers appointed under section 56 shall, at the end of every quarter in each year, select, from the certificates of marriages forwarded to them respectively during such

quarter, the certificates of the marriages of which the Governor-General in Council may desire that evidence shall be transmitted to England,

and shall send the same certificates, signed by them respectively, to the Secretary to the Government of India in the Home Department, for the purpose of being forwarded to the Secretary of State for India and delivered to the Registrar-General of Births, Deaths and Marriages:

Provided that, in the case of the Governments of Madras and Bombay, the said certificates shall be forwarded by such Governments respectively directly to the Secretary of State for India.

Local Government to prescribe fees.

82. Fees shall be chargeable under this Act for—

receiving and publishing notice of marriages;

issuing certificates of marriages by Marriage Registrars, and registering marriages by the same;

entering protests against, or prohibitions of, the issue of marriage certificates by the said Registrars;

searching register-books or certificates, or duplicates or copies thereof;

giving copies of entries in the same under Sections 63 and 79,

The Local Government shall fix the amount of such fees respectively,

and may from time to time vary or remit them either generally or in special cases, as to it may seem fit.

Power to make rules.

83. The Local Government may make rules in regard to the disposal of the fees mentioned in section 82, the supply of register-books, and the preparation and submission of returns of marriages solemnized under this Act.

84. [*Power to prescribe fees and rules for Native States.*] *Omitted as directed by Notification No.* 176—*J., dated the* 31*st December* 1875.

Power to declare who shall be District Judge.

85. The Local Government may, by notification in the official Gazette, declare who shall, in any place to which this Act applies, be deemed to be the District Judge.

86. [*Power to delegate functions under this Act of Governor-General in Council.*] *Omitted as directed by Notification No.* 176—*J., dated the* 31*st December* 1875.

Saving of Consular marriages.

87. Nothing in this Act applies to any marriage performed by any Minister, Consul or Consular Agent between subjects of the State which he represents and according to the laws of such State.

Section 88.

88. Nothing in this Act shall be deemed to validate any marriage which the personal law applicable to either of the parties forbids him or her to enter into. Non-validation of marriages within prohibited degrees.

(*Schedule I.—Notice of Marriage.*)

SCHEDULE I.

(*See sections* 12 *and* 38.)

NOTICE OF MARRIAGE.

To a Minister [*or* Registrar] of

I hereby give you notice that a marriage is intended to be had, within three calendar months from the date hereof, between me and the other party herein named and described (that is to say):

Names	Condition	Rank or profession	Age	Dwelling place	Length of residence	Church, chapel or District in which the place of worship in which the marriage is to be solemnized	District in which the other party resides, when the parties dwell in different districts
James Smith	*Widower.*	*Carpenter*	*Of full age*	16, *Clive Street*	23 *days*	*Free Church of Scotland Church, Calcutta.*	
Martha Green	*Spinster*	.....	*Minor*	20, *Hastings Street*	*More than a month*		

Witness my hand, this day of *seventy-two*

(*Sd.*) *JAMES SMITH.*

[The *italics* in this schedule are to be filled up, as the case may be, and the blank division thereof is only to be filled up when one of the parties lives in another district.]

Schedule II.—Certificate of Receipt of Notice.

SCHEDULE II.

(*See sections* 24 *and* 50.)

CERTIFICATE OF RECEIPT OF NOTICE.

I, do hereby certify that, on the day of , notice was duly entered in my Marriage Notice Book of the marriage intended between the parties therein named and described, delivered under the hand of one of the parties, (that is to say):—

Names	Condition	Rank or profession	Age	Dwelling place	Length of residence	Church, chapel or place of worship in which the marriage is to be solemnized	District in which the other party resides, when the parties dwell in different districts
James Smith.	*Widower.*	*Carpenter.*	*Of full age.*	16, *Clive Street.*	23 *days.*	*Free Church of Scotland Church, Calcutta.*	
Martha Green.	*Spinster.*	.....	*Minor.*	20, *Hastings Street.*	*More than a month.*		

and that the declaration required by section 17 [*or* 41] of the Indian Christian Marriage Act, 1872, has been duly made by the said (*James Smith*).

Date of notice entered
Date of certificate given

} The issue of this certificate has not been prohibited by any person authorized to forbid the issue thereof.

Witness my hand, this day of *seventy-two*

(*Signed.*)

This certificate will be void, unless the Marriage is solemnized on or before the day of

[The *italics* in the schedule are to be filled up, as the case may be, and the blank division thereof is only to be filled up when one of the parties lives in another district.]

SCHEDULE III.

[*Form of Register of Marriages.*]

Omitted as a consequence of the omission of sections 28 *and* 31.

SCHEDULE IV.

[*Marriage Register Book.*]

Omitted as a consequence of the omission of sections 32 *and* 54.

SCHEDULE V.

(*See section* 2.)

ENACTMENTS REPEALED.

Number and year	Title	Extent of repeal
Statute 58 Geo. 3, cap. 84.	An Act to remove doubts as to the validity of certain marriages had and solemnized within the British territories in India.	The whole.
Statute 14 and 15 Vic., cap. 40.	An Act for Marriages in India ...	The whole.
Act No. V of 1852 ...	An Act for giving effect to the provisions of an Act of Parliament, passed in the 15th year of the reign of Her present Majesty, entitled "An Act for Marriages in India."	So much as has not been repealed.
Act No. V of 1865 ...	The Indian Marriage Act, 1865 ...	The whole Act, except so far as it relates to the Straits Settlements.
Act No. XXII of 1866	An Act to extend the Indian Marriage Act, 1865, to the Hyderabad Assigned Districts and the cantonments of Secunderabad, Trimungerry and Aurangabad.	The whole.

ACT V OF 1873.

Notification by the Government of India, Foreign Department, Judicial, No. 118, dated Simla, the 22nd June 1873.

His Excellency the Viceroy and Governor-General in Council is pleased to apply the provisions of Act V of 1873 (The Government Savings Banks Act, 1873) to the Province of Mysore.

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ACT V OF 1873.

(RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL ON THE 28TH JANUARY 1873.)

An Act to amend the law relating to Government Savings Banks.

WHEREAS it is expedient to amend the law relating to the payment of deposits in Government Savings Banks; It is hereby enacted as follows:— Preamble.

Preliminary.

1. This Act may be called "The Government Savings Banks Act, 1873":— Short title.

It extends to the whole of British India; Local extent.

And it shall come into force on the passing thereof. Commencement.

2. Act No. XXVI of 1855 (*to facilitate the payment of small deposits in Government Savings Banks to the representatives of deceased depositors*) is hereby repealed. Repeal of Act XXVI of 1855.

3. In this Act— Interpretation clause.

"Depositor" means a person by whom, or on whose behalf, money has been heretofore, or shall be hereafter, deposited in a Government Savings Bank; and "deposit" means money so deposited: "Depositor." "Deposit."

[" Secretary " includes the Officer in immediate charge of a District Treasury or of the State Huzur Treasury; "Secretary."

" Minor " means a person who has not completed the age of eighteen years or, if he is not domiciled in Mysore, has not attained majority according to the law to which he is subject.] "Minor."

Deposits belonging to the Estates of Deceased persons.

†**4.** If a depositor dies and probate of his will or letters of administration of his estate or a certificate granted under the Succession Certificate Act, 1901, is not, within three months of the death of the depositor, produced then— Payment on death of depositor.

(*a*) if the deposit does not exceed one thousand rupees, the Secretary may pay the same to any person appearing to him to be entitled to receive it, or to administer the estate of the deceased:

[ ] Substituted by Section 1 of Act I of 1930.
† Substituted by Section 2 of Act I of 1930.

Sections 4-A—6.

Provided that if the deposit is in a taluk treasury and does not exceed rupees one hundred, the Amildar of the taluk may pay the same to any person appearing to him to be entitled to receive it, or to administer the estate of the deceased;

(*b*) if the deposit exceeds rupees one thousand but does not exceed three thousand rupees, the Deputy Commissioner of the District in which the deposit is made, and the Comptroller to the Government when the deposit is made in any Treasury in the Bangalore District, may pay the same to any person appearing to him to be entitled to receive it, or to administer the estate of the deceased.†

Payment to nominees in certain cases.

4-A. Notwithstanding anything contained in Section 4 or in the Indian Succession Act, X of 1865, or the Mysore Succession Certificate Act, VII of 1901, or any other law for the time being in force, if a depositor dies leaving any sum of money in a Government Savings Bank, the Secretary of such Bank may pay the same to the person nominated by the depositor during his lifetime and registered in the office of the Secretary under rules to be made by Government in this behalf; provided that such nomination shall not be allowed in the case of deposits belonging to minors.

Payment to be a discharge.

5. Such payment shall be a full discharge from all further liability in respect of the money so paid:

Saving of right of executor.

But nothing herein contained precludes any executor or administrator, or other representative of the deceased, from recovering from the person receiving the same the amount remaining in his hands after deducting the amount of all debts or other demands lawfully paid or discharged by him in due course of administration.

Saving of right of creditor.

And any creditor or claimant against the estate of the deceased may recover his debt or claim out of the money paid under this Act, or the said Act No. XXVI of 1855, to any person, and remaining in his hands unadministered, in the same manner and to the same extent as if the latter had obtained letters of administration of the estate of the deceased.

Security for due administration.

6. The Secretary of any such Bank, [the Amildar of the Taluk, the Deputy Commissioner of the District, or the Comptroller to the Government, as the case may be,]

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* Inserted by Section 1 of Act II of 1911.

[ ] Inserted by Section 3 of Act I of 1930.

may take such security as he thinks necessary from any person to whom he pays any money under section 4 for the due administration of the money so paid,

and he may assign the said security to any person interested in such administration.

Power to administer oath.

7. For the purpose of ascertaining the right of the person claiming to be entitled as aforesaid, the Secretary of any such Bank, [the Amildar of the Taluk, the Deputy Commissioner of the District, or the Comptroller to the Government, as the case may be,] may take evidence on oath or affirmation according to the law for the time being relating to oaths and affirmations.

Penalty for false statements.

Any person who, upon such oath or affirmation, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be deemed guilty of an offence under section 193 of the Indian Penal Code.

Deposit when excluded in computing court-fees.

8. Where the amount of the deposit belonging to the estate of a deceased depositor does not exceed † three thousand rupees, such amount shall be excluded in computing the fee chargeable, under the Court-fees Act, 1870, on the probate, or letters of administration, or certificate (if any) granted in respect of his property:

Provided that the person claiming such probate or letters or certificate shall exhibit to the Court authorized to grant the same a certificate of the amount of the deposit in any Government Savings Bank belonging to the estate of the deceased. Such certificate shall be signed by the Secretary of such Bank, ‡the Amildar of the Taluk, the Deputy Commissioner of the District, or the Comptroller to the Government, as the case may be‡ and the Court shall receive it as evidence of the said amount.

Act not to apply to deposits belonging to estates of European soldiers or deserters.

9. Nothing hereinbefore contained applies to money belonging to the estate of any European officer, non-commissioned officer, or soldier dying in Her Majesty's service in India, or of any European who, at the time of his death, was a deserter from the said service.

Deposits belonging to Minors.

Payment of deposits to minor or guardian.

10. Any deposit made by, or on behalf of, any minor, may be paid to him personally, if he made the deposit, or

[ ] Inserted by section 3 of Act I of 1930.
† Substituted by section 4 of Act I of 1930.
‡ Inserted by section 4 of Act I of 1930.

to his guardian for his use, if the deposit was made by any person other than the minor, together with the interest accrued thereon.

The receipt of any minor or guardian for money paid to him under this section shall be a sufficient discharge therefor.

Legalization of like payments heretofore made.

11. All payments of deposits heretofore made to minors or their guardians by any Secretary of a Government Savings Bank shall be deemed to have been made in accordance with law.

Deposits belonging to lunatics.

Payment of deposits belonging to lunatics.

12. If any depositor becomes insane or otherwise incapable of managing his affairs,

and if such insanity or incapacity is proved to the satisfaction of the Secretary of the Bank in which his deposit may be,

such Secretary, may from time to time, make payments out of the deposit to any proper person,

and the receipt of such person, for money paid under this section, shall be a sufficient discharge therefor.

Where a committee or manager of the depositor's estate has been duly appointed, nothing in this section authorizes payments to any person other than such committee or manager.

Deposits made by Married Women.

Payment of married women's deposits.

13. Any deposit made by or on behalf of a married woman, or by or on behalf of a woman who afterwards marries, may be paid to her, whether or not the Indian Succession Act, 1865, section 4, applies to her marriage; and her receipt for money paid to her under this section shall be a sufficient discharge therefor.

Rules.

Rules regulating certificates under section 8, and payments under section 10, 12 or 13.

14. All certificates under section 8, and all payments under section 10, section 12 or section 13, shall be respectively granted and made [ ] subject to such rules consistent with this Act as the Governor-General in Council may, from time to time prescribe.

[ ] Certain words were deleted by section 5 of Act I of 1930.

ACT X OF 1873.

Notification by the Government of India, Foreign Department, Judicial No. 67, dated Simla, the 19th June 1876.

The Governor-General in Council is pleased to declare that the Indian Oaths Act (Act X of 1873) applies to the Province of Mysore, subject to the following modification, (that is to say) in section 7 for the words "High Court" the words "Judicial Commissioner of Mysore" shall be substituted.*

* As to this, however, see Notification of the Dewan of Mysore No. 24, dated the 28th April 1881, which directs the substitution of "Chief Judge" and "Chief Court" for "Judicial Commissioner" and "Court of the Judicial Commissioner" respectively in all Notifications and Rules having the force of law in Mysore.

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16. Official oaths abolished.

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Sections 1—4.

ACT X OF 1873.

(RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL ON THE 8TH APRIL 1873.

An Act to consolidate the law relating to Judicial Oaths, and for other purposes.

Whereas it is expedient to consolidate the law relating to judicial oaths, affirmations and declarations, and to repeal the law relating to official oaths, affirmations and declarations; It is hereby enacted as follows:— Preamble.

I.—*Preliminary.*

1. This Act may be called "The Indian Oaths Act, 1873." Short title.

It extends to the whole of British India, and, so far as regards subjects of Her Majesty, to the territories of Native Princes and States in alliance with Her Majesty. Local extent

[*Commencement.*] *Repealed by Act XII* of 1876 *before the present Act was extended to Mysore.*

2. [*Repeal of enactments.*] *Repealed by Act XII of* 1876 *before the present Act was extended to Mysore.*

3. Nothing herein contained applies to proceedings before Courts Martial, or to oaths, affirmations or declarations prescribed by any law which, under the provisions of the Indian Councils Act, 1861, the Governor-General in Council has not power to repeal. Saving of certain oaths and affirmations.

II.—Authority to administer Oaths and Affirmations.

4. The following Courts and persons are authorized to administer, by themselves or by an officer empowered by them in this behalf, oaths and affirmations in discharge of the duties or in exercise of the powers imposed or conferred upon them respectively by law:— Authority to administer oaths and affirmations.

(*a*) all Courts and persons having by law or consent of parties authority to receive evidence;

(*b*) the Commanding Officer of any military station occupied by troops in the service of Her Majesty:

Provided:

(1) that the oath or affirmation be administered within the limits of the station, and

(2) that the oath or affirmation be such as a Justice of the Peace is competent to administer in British India.

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III.—Persons by whom Oaths or Affirmations must be made.

Oaths or affirmations to be made by—

witnesses;

interpreters;

jurors.

5. Oaths or affirmations shall be made by the following persons :—

(*a*) all witnesses, that is to say, all persons who may lawfully be examined, or give, or be required to give, evidence by or before any Court or person having by law or consent of parties authority to examine such persons or to receive evidence ;

(*b*) interpreters of questions put to, and evidence given by, witnesses ; and

(*c*) jurors.

Nothing herein contained shall render it lawful to administer, in a criminal proceedings, an oath or affirmation to the accused person, or necessary to administer to the official interpreter of any Court, after he has entered on the execution of the duties of his office, an oath or affirmation that he will faithfully discharge those duties.

Affirmation by Natives or by persons objecting to oaths.

6. Where the witness, interpreter or juror is a Hindu or Muhammadan,

or has an objection to making an oath,

he shall, instead of making an oath, make an affirmation.

In every other case the witness, interpreter or juror shall make an oath.

IV.—Forms of Oaths and Affirmations.

Forms of oaths and affirmations.

7. All oaths and affirmations made under section 5 shall be administered according to such forms as the High Court may from time to time prescribe.

And, until any such forms are prescribed by the High Court, such oaths and affirmations shall be administered according to the forms now in use.

Explanation.—As regards oaths and affirmations administered in the Court of the Recorder of Rangoon and the Court of Small Causes of Rangoon, the Recorder of Rangoon shall be deemed to be the High Court within the meaning of this section.

Power of Court to tender certain oaths.

8. If any party to, or witness in, any judicial proceeding offers to give evidence on oath or solemn affirmation in any form common amongst, or held binding by, persons of the race or persuasion to which he belongs, and not repugnant to justice or decency, and not purporting to affect any third person, the Court may, if it thinks fit,

Sections 9—14.

notwithstanding anything hereinbefore contained, tender such oath or affirmation to him.

Court may ask party or witness whether he will make oath proposed by opposite party.

9. If any party to any judicial proceedings offers to be bound by any such oath or solemn affirmation as is mentioned in section 8, if such oath or affirmation is made by the other party to, or by any witness in, such proceedings, the Court may, if it thinks fit, ask such party or witness, or cause him to be asked, whether or not he will make the oath or affirmation:

Provided that no party or witness shall be compelled to attend personally in Court solely for the purpose of answering such question.

Administration of oath if accepted.

10. If such party or witness agrees to make such oath or affirmation, the Court may proceed to administer it, or, if it is of such a nature that it may be more conveniently made out of Court, the Court may issue a commission to any person to administer it, and authorize him to take the evidence of the person to be sworn or affirmed and return it to the Court.

Evidence conclusive as against person offering to be bound.

11. The evidence so given shall, as against the person who offered to be bound as aforesaid, be conclusive proof of the matter stated.

Procedure in case of refusal to make oath.

12. If the party or witness refuses to make the oath or solemn affirmation referred to in section 8, he shall not be compelled to make it, but the Court shall record, as part of the proceedings, the nature of the oath or affirmation proposed, the facts that he was asked whether he would make it, and that he refused it, together with any reason which he may assign for his refusal.

V.—Miscellaneous.

Proceedings and evidence not invalidated by omission of oath or irregularity.

13. No omission to take any oath or make any affirmation, no substitution, of any one for any other of them, and no irregularity whatever, in the form in which any one of them is administered, shall invalidate any proceeding or render inadmissible any evidence whatever, in or in respect of which such omission, substitution or irregularity took place, or shall affect the obligation of a witness to state the truth.

Persons giving evidence bound to state the truth.

14. Every person giving evidence on any subject before any Court or person hereby authorized to administer oaths and affirmations shall be bound to state the truth on such subject.

Sections 15-16.

Amendment of Penal Code sections 178 and 181.

15. The Indian Penal Code sections 178 and 181 shall be construed as if, after the word " oath," the words " or affirmation " were inserted.

Official oaths abolished.

16. Subject to the provisions of sections 3 and 5, no person appointed to any office shall, before entering on the execution of the duties of his office, be required to make any oath, or to make or subscribe any affirmation or declaration whatever.

SCHEDULE.

[*Enactments repealed.*]

Repealed by Act XII of 1873 *before the present Act was extended to Mysore.*

ACT I OF 1877.

Notification by the Government of India, Foreign Department, Judicial, No. 47—J., dated Simla, the 27th May 1878.

The Governor-General in Council is pleased to direct that, the following Acts,* subject to the undermentioned modifications shall become law in the Territories of Mysore, from the first June 1878 :—

Act IX of 1872† (The Indian Contract Act), except the explanation appended to section 265. The word " Court " in this section shall be taken to mean " a Court not inferior, to the Court of the Judicial Assistant Commissioner."

Act I of 1877 (The Specific Relief Act), except Chapter VIII.

* So much of this Notification as extended Act X of 1877 (The Code of Civil Procedure) to Mysore was cancelled by Act II of 1884 s. 52.

† For Act IX of 1872, *vide supra* pp. 220-308.

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ACT I OF 1877.

(RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL ON THE 7TH FEBRUARY 1877.)

An Act to define and amend the law relating to certain kinds of Specific Relief.

WHEREAS it is expendient to define and amend the law relating to certain kinds of specific relief obtainable in civil suits; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

Short title. **1.** This Act may be called "The Specific Relief Act, 1877."

Local extent. It extends to the whole of British India, except the Scheduled Districts as defined in Act No. XVI of 1874.

Commencement. And it shall come into force on the first day of May 1877.

Repeal of enactments. **2.** On and from that day of the Acts specified in the Schedule hereto annexed shall be repealed to the extent mentioned in its third column.

Interpretation-clause. **3.** In this Act, unless there be something repugnant in the subject or context,—

'obligation' includes every duty enforceable by law:

'trust' includes every species of express, implied or constructive fiduciary ownership:

'trustee' includes every person holding, expressly, by implication or constructively, a fiduciary character:

Illustrations.

(*a*) Z bequeaths land to A, 'not doubting that he will pay thereout an annuity of Rupees 1,000 to B for his life.' A accepts the bequest. A is a trustee within the meaning of this Act for B to the extent of the annuity.

(*b*) A is the legal, medical or spiritual adviser of B. By availing himself of his situation as such adviser, A gains some pecuniary advantage which might otherwise have accrued to B. A is a trustee, for B, within the meaning of this Act, of such advantage.

(*c*) A, being B's banker, discloses for his own purpose the state, of B's account. A is a trustee within the meaning of this Act, for B, of the benefit gained by him by means of such diclosure.

(*d*) A, the mortgagee of certain leaseholds, renews the lease in his own name. A is a trustee, within the meaning of this Act, of the renewed lease, for those interested in the original lease.

Sections 4—6

(*e*) A, one of several partners, is employed to purchase goods for the firm. A, unknown to his co-partners, supplies them, at the market price, with goods previously bought by himself when the price was lower—and thus makes a considerable profit. A is a trustee for his co-partners, within the meaning of this Act, of the profit so made.

(*f*) A, the manager of B's indigo factory, becomes agent for C, a vendor of indigo-seed, and receives, without B's assent, commission on the seed purchased from C for the factory. A is a trustee, within the meaning of this Act, for B, of the commission so received.

(*g*) A buys certain land with notice that B has already contracted to buy it. A is a trustee, within the meaning of this Act, for B, of the land so bought.

(*h*) A buys land from B, having notice that C is in occupation of the land. A omits to make any inquiry as to the nature of C's interest therein. A is a trustee, within the meaning of this Act, for C, to the extent of that interest.

"Settlement" means any instrument (other than a will or codicil as defined by the Indian Succession Act) whereby the destination or devolution of successive interests in moveable or immoveable property is disposed of or is agreed to be disposed of.

Words defined in Contract Act.

and all words occurring in this Act, which are defined in the Indian Contract Act, 1872, shall be deemed to have the meanings respectively assigned to them by that Act.

Savings.

4. Except where it is herein otherwise expressly enacted, nothing in this Act shall be deemed—

(*a*) to give any right to relief in respect of any agreement which is not a contract;

(*b*) to deprive any person of any right to relief, other than specific performance, which he may have under any contract; or

(*c*) to affect the operation of the Indian Registration Act, on documents.

Specific relief how given.

5. Specific relief is given—

(*a*) by taking possession of certain property and delivering it to a claimant;

(*b*) by ordering a party to do the very act which he is under an obligation to do;

(*c*) by preventing a party from doing that which he is under an obligation not to do;

(*d*) by determining and declaring the rights of parties otherwise than by an award of compensation; or

(*e*) by appointing a receiver.

Preventive relief.

6. Specific relief granted under clause (*c*) of section 5 is called preventive relief.

Sections 7—10.

7. Specific relief cannot be granted for the mere purpose of enforcing a penal law. Relief not granted to enforce penal law.

PART II

OF SPECIFIC RELIEF

CHAPTER I.

OF RECOVERING POSSESSION OF PROPERTY.

(*a*) *Possession of Immoveable Property.*

8. A person entitled to the possession of specific immoveable property may recover it in the manner prescribed by the Code of Civil Procedure. Recovery of specific immoveable property.

9. If any person is dispossessed without his consent of immoveable property otherwise than in due course of law, he or any person claiming through him may, by suit instituted within six months from the date of the dispossession, recover possession thereof, notwithstanding any other title that may be set up in such suit. Suit by person dispossessed of immoveable property.

Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

No suit under this section shall be brought against the Government.

No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

(*b*) *Possession of Moveable Property.*

10. A person entitled to the possession of specific moveable property may recover the same in the manner prescribed by the Code of Civil Procedure. Recovery of specific moveable property.

Explanation 1.—A trustee may sue under this section for the possession of property to the beneficial interest in which the person for whom he is trustee is entitled.

Explanation 2.—A special or temporary right to the present possession of property is sufficient to support a suit under this section.

Section 11

Illustrations.

(*a*) A bequeaths land to B for his life, with remainder to C. A dies. B enters on the land, but C, without B's consent, obtains possession of the title-deeds. B may recover them from C.

(*b*) A pledges certain jewels to B to secure a loan. B disposes of them before he is entitled to do so. A, without having paid or tendered the amount of the loan, sues B for possession of the jewels. The suit should be dismissed, as A is not entitled to their possession, whatever right he may have to secure their safe custody.

(*c*) A receives a letter addressed to him by B. B gets back the letter without A's consent. A has such a property therein as entitles him to recover it from B.

(*d*) A deposits books and papers for safe custody with B. B loses them and C finds them, but refuses to deliver them to B when demanded. B may recover them from C, subject to C's right, if any, under section 168 of the Indian Contract Act, 1872.

(*e*) A, a warehouse-keeper, is charged with the delivery of certain goods to Z, which B takes out of A's possession. A may sue B for the goods.

Liability of person in possession, not as owner, to deliver to person entitled to immediate possession.

11. Any person having the possession or control of a particular article of moveable property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession, in any of the following cases:—

(*a*) when the thing claimed is held by the defendant as the agent or trustee of the claimant;

(*b*) when compensation in money would not afford the claimant adequate relief for the loss of the thing claimed;

(*c*) when it would be extremely difficult to ascertain the actual damage caused by its loss;

(*d*) when the possession of the thing claimed has been wrongfully transferred from the claimant.

Illustrations.

of clause (*a*)—A, proceeding to Europe, leaves his furniture in charge of B as his agent during his absence. B, without A's authority, pledges the furniture to C, and C, knowing that B had no right to pledge the furniture, advertises it for sale. C may be compelled to deliver the furniture to A, for he holds it as A's trustee.

of clause (*b*)—Z has got possession of an idol belonging to A's family and of which A is the proper custodian. Z may be compelled to deliver the idol to A.

of clause (*c*)—A is entitled to a picture by a dead painter and a pair of rare China vases. B has possession of them. The articles are of too special a character to bear an ascertainable market-value. B may be compelled to deliver them to A.

Section 12.

CHAPTER II.

OF THE SPECIFIC PERFORMANCE OF CONTRACTS.

(*a*) *Contracts which may be specifically enforced.*

Cases in which specific performance enforceable.

12. Except as otherwise provided in this chapter, the specific performance of any contract may in the discretion of the Court be enforced—

(*a*) when the act agreed to be done is in the performance, wholly or partly, of a trust;

(*b*) when there exists no standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done;

(*c*) when the act agreed to be done is such that, pecuniary compensation for its non-performance would not afford adequate relief; or

(*d*) when it is probable that pecuniary compensation cannot be got for the non-performance of the act agreed to be done.

Explanation.—Unless and until the contrary is proved, the Court shall presume that the breach of a contract to transfer immoveable property cannot be adequately relieved by compensation in money, and that the breach of a contract to transfer moveable property can be thus relieved.

Illustration.

of clause (*a*)—A holds certain stock in trust for B. A wrongfully disposes of the stock. The law creates an obligation on A to restore the same quantity of stock to B, and B may enforce specific performance of this obligation.

of clause (*b*)—A agrees to buy, and B agrees to sell, a picture by dead painter and two rare China vases. A may compel B specifically to perfo rm this contract, for there is no standard for ascertaining the actual damage which would be caused by its non-performance.

of clause (*c*)—A contracts with B to sell him a house for Rupees 1,000. B is entitled to a decree directing A to convey the house to him, he paying the purchase-money.

In consideration of being released from certain obligations imposed on it by its Act of Incorporation, a railway-company contract with Z to make an archway through their railway to connect lands of Z sev ered by the railway, to construct a road between certain specified po ints, to pay a certain annual sum towards the maintenance of this road and also to construct a siding and a wharf as specified in the contract. Z is entitled to have this contract specifically enforced, for his interest in its performance cannot be adequately compensated for by money; and the Court may appoint a proper person to superintend the construction of the archway road, siding and wharf.

Sections 13-14.

A contracts to sell, and B contracts to buy, a certain number of railway-shares of a particular description. A refuses to complete the sale. B may compel A specifically to perform this agreement, for the shares are limited in number and not always to be had in the market, and their possession carries with it the status of a shareholder, which cannot otherwise be procured.

A contracts with B to paint a picture for B, who agrees to pay therefor Rupees 1,000. The picture is painted. B is entitled to have it delivered to him on payment or tender of the Rupees 1,000.

of clause (*d*)—A transfers without endorsement, but for valuable consideration, a promissory note to B. A becomes insolvent, and C is appointed his assignee. B may compel C to endorse the note, for C has succeeded to A's liabilities, and a decree for pecuniary compensation for not endorsing the note would be fruitless.

Contracts of which the subject has partially ceased to exist.

13. Notwithstanding anything contained in section 56 of the Indian Contract Act, a contract is not wholly impossible of performance because a portion of its subject matter, existing at its date, has ceased to exist at the time of the performance.

Illustrations.

(*a*) A contracts to sell a house to B for a lakh of rupees. The day after the contract is made, the house is destroyed by a cyclone. B may be compelled to perform his part of the contract by paying the purchase-money.

(*b*) In consideration of a sum of money payable by B, A contracts to grant an annuity to B for B's life. The day after the contract has been made, B is thrown from his horse and killed. B's representative may be compelled to pay the purchase-money.

Specific performance of part of contract where part unperformed is small.

14. Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed bears only a small proportion to the whole in value, and admits of compensation in money, the Court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.

Illustrations.

(*a*) A contracts to sell B a piece of land consisting of 100 bighas. It turns out that 98 bighas of the land belong to A, and the two remaining bighas to a stranger, who refuses to part with them. The two bighas are not necessary for the use or enjoyment of the 98 bighas, nor so important for such use or enjoyment that the loss of them may not be made good in money. A may be directed at the suit of B to convey to B the 98 bighas, and to make compensation to him for not conveying the two remaining bighas; or B may be directed, at the suit of A, to pay to A, on receiving the conveyance and possession of the land, the stipulated purchase-money less a sum awarded as compensation for the deficiency.

Sections 15—17.

(*b*) In a contract for the sale and purchase of a house and lands for two lakhs of rupees, it is agreed that part of the furniture should be taken at a valuation. The Court may direct specific performance of the contract notwithstanding the parties are unable to agree as to the valuation of the furniture, and may either have the furniture valued in the suit and include in the decree for specific performance, or may confine its decree to the house.

Specific performance of part of contract where part unperformed is large.

15. Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed forms a considerable portion of the whole, or does not admit of compensation in money, he is not entitled to obtain a decree for specific performance. But the Court may, at the suit of the other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, provided that the plaintiff relinquishes all claim to further performance, and all right to compensation, either for the deficiency, or for the loss or damage sustained by him through the default of the defendant.

Illustrations.

(*a*) A contracts to sell to B a piece of land consisting of 100 bighas. It turns out that 50 bighas of the land belong to A, and the other 50 bighas to a stranger, who refuses to part with them. A cannot obtain a decree against B for the specific performance of the contract; but if B is willing to pay the price agreed upon, and to take the 50 bighas which belong to A, waiving all right to compensation either for the deficiency or for loss sustained by him through A's neglect or default, B is entitled to a decree directing A to convey those 50 bighas to him on payment of the purchase money.

(*b*) A contracts to sell to B an estate with a house and garden for a lakh of rupees. The garden is important for the enjoyment of the house. It turns out that A is unable to convey the garden. A cannot obtain a decree against B for the specific performance of the contract; but if B is willing to pay the price agreed upon, and to take the estate and house without the garden, waiving all right to compensation either for the deficiency or for loss sustained by him through A's neglect or default, B is entitled to a decree, directing A to convey the house to him on payment of the purchase-money.

Specific performance of independent part of contract.

16. When a part of a contract which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed, the Court may direct specific performance of the former part.

Bar in other cases of specific performance of part of contract.

17. The Court shall not direct the specific performance of a part of a contract, except in cases coming under one or other of the three last preceding sections.

Sections 18-19.

Purchaser's rights against vendor with imperfect title.

18. Where a person contracts to sell or let certain property, having only an imperfect title thereto, the purchaser or lesssee (except as otherwise provided by this chapter) has the following rights :—

(*a*) if the vendor or lessor has subsequently to the sale or lease acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest ;

(*b*) where the concurrence of other persons is necessary to validate the title, and they are bound to convey at the vendor's or lessor's request, the purchaser or lessee may compel him to procure such concurrence ;

(*c*) where the vendor professes to sell unincumbered property, but the property is mortgaged for an amount not exceeding the purchase-money, and the vendor has in fact only a right to redeem it, the purchaser may compel him to redeem the mortgage and to obtain a conveyance from the mortgagee ;

(*d*) where the vendor or lessor sues for specific performance of the contract, and the suit is dismissed on the ground of his imperfect title, the defendant has a right to a return of his deposit (if any) with interest thereon, to his costs of the suit, and to a lien for such deposit, interest and costs on the interest of the vendor or lessor in the property agreed to be sold or let.

Power to award compensation in certain cases.

19. Any person suing for the specific performance of a contract, may also ask for compensation for its breach either in addition to, or in substitution for, such performance.

If in any such suit the Court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant and that the plaintiff is entitled to compensation for that breach, it shall award him compensation accordingly.

If in any such suit the Court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.

Compensation awarded under this section may be assessed in such manner as the Court may direct.

Explanation.—The circumstance that the contract has become incapable of specific performance, does not preclude the Court from exercising the jurisdiction conferred by this section.

Sections 20-21.

Illustrations.

of the second paragraph—A contracts to sell a hundred maunds of rice to B. B brings a suit to compel A to perform the contract or to pay compensation. The Court is of opinion that A has made a valid contract and has broken it, without excuse, to the injury of B, but that specific performance is not the proper remedy. It shall award to B such compensation as it deems just.

of the third paragraph—A contracts with B to sell him a house for Rupees 1,000, the price to be paid and the possession given on the 1st January 1877. A fails to perform his part of the contract, and B brings his suit for specific performance and compensation, which is decided in his favour on the 1st January 1878. The decree may, besides ordering specific performance, award to B compensation for any loss which he has sustained by A's refusal.

of the Explanation—A a purchaser, sues B, his vendor, for specific performance of a contract for the sale of a patent. Before the hearing of the suit, the patent expires. The Court may award A compensation for the non-performance of the contract, and may, if necessary, amend the plaint for that purpose.

A sues for the specific performance of a resolution passed by the Directors of a public company, under which he was entitled to have a certain number of shares allotted to him, and for compensation for the non-performance of the resolution. All the shares had been allotted before the institution of the suit. The Court may, under this section, award A compensation for the non-performance.

Liquidation of damages; not a bar to specific performance.

20. A contract, otherwise proper to be specifically enforced, may be thus enforced, though a sum be named in it as the amount to be paid in case of its breach, and the party in default is willing to pay the same.

Illustration.

A contracts to grant B an under-lease of property held by A under C, and that he will apply to C for a license necessary to the validity of the under-lease, and that, if the license is not procured, A will pay B Rupees 10,000. A refuses to apply for the license and offers to pay B the Rupees 10,000. B is nevertheless entitled to have the contract specifically enforced if C consents to give the license.

(*b*) *Contracts which cannot be specifically enforced.*

Contracts not specifically enforceable.

21. The following contracts cannot be specifically enforced :—

(a) a contract for the non-performance of which compensation in money is an adequate relief;

(*b*) a contract which runs into such minute or numerous details, or which is so dependent on the personal qualifications or volition of the parties, or otherwise from

its nature is such, that the Court cannot enforce specific performance of its material terms;

(*c*) a contract the terms of which the Court cannot find with reasonable certainty;

(*d*) a contract which is in its nature revocable;

(*e*) a contract made by trustees either in excess of their powers, or in breach of their trust;

(*f*) a contract made by or on behalf of a corporation or public company created for special purposes, or by the promoters of such company, which is in excess of its powers;

(*g*) a contract the performance of which involves the performance of a continuous duty extending over a longer period than three years from its date;

(*h*) a contract of which a material part of the subject matter, supposed by both parties to exist, has, before it has been made, ceased to exist.

And, save as provided by the Code of Civil Procedure, no contract to refer a controversy to arbitration shall be specifically enforced; but if any person who has made such a contract and has refused to perform it, sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit.

Illustrations.

to (*a*).—A contracts to sell, and B contracts to buy, a lakh of rupees in the four per cent loan of the Government of India:

A contracts to sell, and B contracts to buy, 40 chests of indigo at Rupees 1,000 per chest:

In consideration of certain property having been transferred by A to B, B contracts to open a credit in A's favour to the extent of Rupees 10,000 and to honour A's drafts to that amount.

The above contracts cannot be specifically enforced, for, in the first and the second both A and B, and in the third A, would be reimbursed by compensation in money.

to (*b*).—A contracts to render personal service to B:

A contracts to employ B on personal service:

A, an author, contracts with B, a publisher, to complete a literary work. B cannot enforce specific performance of these contracts.

A contracts to buy B's business at the amount of a valuation to be made by two valuers, one to be named by A and the other by B. A and B each name a valuer, but before the valuation is made A instructs his valuer not to proceed.

By a charter-party entered into in Calcutta between A, the owner of a ship, and B, the charterer, it is agreed that the ship shall proceed to Rangoon, and there load a cargo of rice, and thence proceed to London, freight to be paid, one-third on arrival at Rangoon, and two-thirds on delivery of the cargo in London:

Section 21.

A lets land to B and B contracts to cultivate it in a particular manner for three years next after the date of the lease :

A and B contract that, in consideration of annual advances to be made by A, B will for three years next after the date of the contract grow particular crops on the land in his possession and deliver them to A when cut and ready for delivery.

A contracts with B that, in consideration of Rupees 1,000 to be paid to him by B, he will paint a picture for B :

A contracts with B to execute certain works which the Court cannot superintend :

A contracts to supply B with all the goods of a certain class which B may require :

A contracts with B to take from B a lease of a certain house for a specified term, at a specified rent, "if the drawing-room is handsomely decorated," even if it is held to have so much certainty that compensation can be recovered for its breach.

A contracts to marry B.

The above contracts cannot be specifically enforced.

to (*c*)—A, the owner of a refreshment-room, contracts with B to give him accommodation there for the sale of his goods and to furnish him with the necessary appliances. A refuses to perform his contract. The case is one for compensation and not for specific performance, the amount and nature of the accommodation and appliances being undefined.

to (*d*) - A and B contract to become partners in a certain business, the contract not specifying the duration of the proposed partnership. This contract cannot be specifically performed, for, if it were so performed either A or B might at once dissolve the partnership.

to (*e*)—A is a trustee of land with power to lease it for seven years. He enters into a contract with B to grant a lease of the land for seven years, with a covenant to renew the lease at the expiry of the term. This contract cannot be specifically enforced.

The Directors of a company have power to sell the concern with the sanction of a general meeting of the shareholders. They contract to sell it without any such sanction. This contract cannot be specifically enforced.

Two trustees, A and B, empowered to sell trust-property worth a lakh of rupees, contract to sell it to C for Rupees 30,000. The contract is so disadvantageous as to be a breach of trust. C cannot enforce its specific performance.

The promoters of a company for working mines contract that the company, when formed, shall purchase certain mineral property. They take no proper precautions to ascertain the value of such property, and in fact agree to pay an extravagant price therefor. They also stipulate that the vendors shall give them a bonus out of the purchase-money. This contract cannot be specifically enforced.

to (*f*)—A company existing for the sole purpose of making and working a railway contract for the purchase of a piece of land for the purpose of erecting a cotton-mill thereon. This contract cannot be specifically enforced.

to (*g*)—A contracts to let for twenty-one years to B the right to use such part of a certain railway made by A as was upon B's land,

and that B should have a right of running carriages over the whole line on certain terms, and might require A to supply the necessary engine-power, and that A should during the term keep the whole railway in good repair. Specific performance of this contract must be refused to B.

to (*h*)—A contracts to pay an annuity to B for the lives of C and D. It turns out that, at the date of the contract, C, though supposed by A and B to be alive, was dead. The contract cannot be specifically performed.

(*c*) *Of the Discretion of the Court.*

Discretion as to decreeing specific performance.

22. The jurisdiction to decree specific performance is discretionary, and the Court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a Court of appeal.

The following are cases in which the Court may properly exercise a discretion not to decree specific performance :—

1. Where the circumstances under which the contract is made are such as to give the plaintiff an unfair advantage over the defendant, though there may be no fraud or misrepresentation on the plaintiff's part.

Illustrations.

(*a*) A, a tenant for life of certain property, assigns his interest therein to B. C contracts to buy, and B contracts to sell, that interest. Before the contract is completed, A receives a mortal injury, from the effects of which he dies the day after the contract is executed. If B and C were equally ignorant or equally aware of the fact, B is entitled to specific performance of the contract. If B knew the fact, and C did not, specific performance of the contract should be refused to B.

(*b*) A contracts to sell to B the interest of C in certain stock-in-trade. It is stipulated that the sale shall stand good, even though it should turn out that C's interest is worth nothing. In fact, the value of C's interest depends on the result of certain partnership accounts, on which he is heavily in debt to his partners. This indebtedness is known to A, but not to B. Specific performance of the contract should be refused to A.

(*c*) A contracts to sell, and B contracts to buy, certain land. To protect the land from floods, it is necessary for its owner to maintain an expensive embankment. B does not know of this circumstance, and A conceals it from him. Specific performance of the contract should be refused to A.

(*d*) A's property is put up to auction. B requests C, A's attorney, to bid for him. C does this inadvertently and in good faith. The persons present, seeing the vendor's attorney bidding, think that he is a mere puffer and cease to compete. The lot is knocked down to B at a low price. Specific performance of the contract should be refused to B.

Section 22

II. Where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff.

Illustrations.

(*e*) A is entitled to some land under his father's will on condition that if he sells it within twenty-five years, half the purchase-money shall go to B. A, forgetting the condition, contracts, before the expiration of the twenty-five years, to sell the land to C. Here, the enforcement of the contract would operate so harshly on A, that the Court will not compel its specific performance in favour of C.

(*f*) A and B, trustees, join their beneficiary, C, in a contract to sell the trust estate to D, and personally agree to exonerate the estate from heavy encumbrances to which it is subject. The purchase-money is not nearly enough to discharge those encumbrances, though at the date of the contract, the vendors believed it to be sufficient. Specific performance of the contract should be refused to D.

(*g*) A, the owner of an estate, contracts to sell it to B, and stipulates that he, A, shall not be obliged to define its boundary. The estate really comprises a valuable property, not known to either to be part of it. Specific performance of the contract should be refused to B unless he waives his claim to the unknown property.

(*h*) A contracts with B to sell him certain land, and to make a road to it from a certain railway—station. It is found afterwards that A cannot make the road without exposing himself to litigation. Specific performance of the part of the contract relating to the road should be refused to B, even though it may be held that he is entitled to specific performance of the rest with compensation for loss of the road.

(*i*) A, a lessee of mines, contracts with B, his lessor, that at any time during the continuance of the lease B may give notice of his desire to take the machinery and plant used in and about the mines, and that he shall have the articles specified in his notice delivered to him at a valuation on the expiry of the lease. Such a contract might be most injurious to the lessee's business, and specific performance of it should be refused to B.

(*j*) A contracts to buy certain land from B. The contract is silent as to access to the land. No right of way to it can be shown to exist. Specific performance of the contract should be refused to B.

(*k*) A contracts with B to buy from B's manufactory and not elsewhere all the goods of a certain class used by A in his trade. The Court cannot compel B to supply the goods, but if he does not supply them A may be ruined, unless he is allowed to buy them elsewhere. Specific performance of the contract should be refused to B.

The following is a case in which the Court may properly exercise a discretion to decree specific performance :—

III. Where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

Sections 23-24.

Illustrations.

A sells land to a railway company, who contract to execute certain works for his convenience. The company take the land and use it for their railway. Specific performance of the contract to execute the works should be decreed in favour of A.

(*d*) *For whom Contracts may be specifically enforced.*

Who may obtain specific performance.

23. Except as otherwise provided by this chapter, the specific performance of a contract may be obtained by—

(*a*) any party thereto;

(*b*) the representative in interest, or the principal, of any party thereto; provided that, where the learning, skill, solvency or any personal quality of such party is a material ingredient in the contract, or where the contract provides that his interest shall not be assigned, his representative in interest or his principal shall not be entitled to specific performance of the contract, unless where his part thereof has already been performed;

(*c*) where the contract is a settlement on marriage, or a compromise of doubtful rights between members of the same family, any person beneficially entitled thereunder;

(*d*) where the contract has been entered into by a tenant for life in due exercise of a power, the remainderman;

(*e*) a reversioner in possession, where the agreement is a covenant entered into with his predecessor in title and the reversioner is entitlted to the benefit of such covenant;

(*f*) a reversioner in remainder, where the agreement is such a covenant, and the reversioner is entitled to the benefit thereof and will sustain material injury by reason of its breach;

(*g*) When a public company has entered into a contract and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation;

(*h*) when the promoters of a public company have, before its incorporation, entered into a contract for the purposes of the company, and such contract is warranted by the terms of the incorporation, the company.

(*e*) *For whom Contracts cannot be specifically enforced.*

Personal bars to the relief.

24. Specific performance of a contract cannot be enforced in favour of a person:—

(*a*) who could not recover compensation for its breach;

Section 25.

(*b*) who has become incapable of performing, or violates, any essential term of the contract that on his part remains to be performed;

(*c*) who has already chosen his remedy and obtained satisfaction for the alleged breach of contract; or

(*d*) who, previously to the contract, had notice that a settlement of the subject-matter thereof (though not founded on any valuable consideration) had been made and was then in force.

Illustrations.

to clause (*a*)—A, in the character of agent for B, enters into an agreement with C to buy C's house. A is in reality acting, not as agent for B, but on his own account. A cannot enforce specific performance of this contract.

to clause (*b*)—A contracts to sell B a house and to become tenant thereof for a term of fourteen years from the date of the sale at a specified yearly rent. A becomes insolvent. Neither he nor his assignee can enforce specific performance of the contract.

A contracts to sell B a house and garden in which there are ornamental trees, a material element in the value of the property as a residence. A, without B's consent, fells the trees. A cannot enforce specific performance of the contract.

A, holding land under a contract with B for a lease, commits waste, or treats the land in an unhusbandlike manner. A cannot enforce specific performance of the contract.

A contracts to let, and B contracts to take, an unfinished house, B contracting to finish the house and the lease to contain covenants on the part of A to keep the house in repair. B finishes the house in a very defective manner: he cannot enforce the contract specifically, though A and B may sue each other for compensation for breach of it.

to clause (*c*)—A contracts to let, and B contracts to take, a house for a specified term at a specified rent. B refuses to perform the contract. A thereupon sues for, and obtains, compensation for the breach. A cannot obtain specific performance of the contract.

Contracts to sell property by one who has no title or who is a voluntary settler.

25. A contract for the sale or letting of property, whether moveable or immoveable, cannot be specifically enforced in favour of a vendor or lessor:—

(*a*) who, knowing himself not to have any title to the property, had contracted to sell or let the same;

(*b*) who, though he entered into the contract believing that he had a good title to the property, cannot at the time fixed by the parties or by the Court for the completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubt;

(*c*) who, previous to entering into the contract, has made a settlement (though not founded on any valuable consideration) of the subject-matter of the contract.

Section 26.

Illustrations.

(*a*) A, without C's authority, contracts to sell to B an estate which A knows to belong to C. A cannot enforce specific performance of this contract, even though C is willing to confirm it.

(*b*) A bequeaths his land to trustees, declaring that they may sell it with the consent in writing of B. B gives a general prospective assent in writing to any sale which the trustees may make. The trustees then enter into a contract with C to sell him the land. C refuses to carry out the contract. The trustees cannot specifically enforce this contract, as, in the absence of B's consent to the particular sale to C, the title which they can give C is, as the law stands, not free from reasonable doubt.

(*c*) A, being in possession of certain land, contracts to sell it to Z. On inquiry it turns out that A claims the land as heir of B, who left the country several years before, and is generally believed to be dead, but of whose death there is no sufficient proof. A cannot compel Z specifically to perform the contract.

(*d*) A, out of natural love and affection, makes a settlement of certain property on his brothers and their issue, and afterwards enters into a contract to sell the property to a stranger. A cannot enforce specific performance of this contract so as to over ride the settlement, and thus prejudice the interests of the persons claiming under it.

(*f*) *For whom Contracts cannot be specifically enforced, except with a Variation.*

Non-enforcement except with variation.

26. Where a plaintiff seeks specific performance of a contract in writing, to which the defendant sets up a variation, the plaintiff cannot obtain the performance sought, except with the variation so set up, in the following cases (namely) :—

(*a*) where by fraud or mistake of fact the contract of which performance is sought is in terms different from that which the defendant supposed it to be when he entered into it ;

(*b*) where by fraud, mistake of fact, or surprise the defendant entered into the contract under a reasonable misapprehension as to its effect as between himself and the plaintiff ;

(*c*) where the defendant, knowing the terms of the contract and understanding its effect, has entered into it relying upon some misrepresentation by the plaintiff, or upon some stipulation on the plaintiff's part, which adds to the contract, but which he refuses to fulfil ;

(*d*) where the object of the parties was to produce a certain legal result, which the contract as framed is not calculated to produce ;

(*e*) where the parties have, subsequently to the execution of the contract, contracted to vary it.

Section 27.

Illustrations.

(*a*) A, B and C sign a writing by which they purport to contract each to enter into a bond to D for Rupees 1,000. In a suit by D, to make A, B and C separately liable, each to the extent of Rupees 1,000, they prove that the word "each" was inserted by mistake; that the intention was that they should give a joint bond for Rupees 1,000. D can obtain the performance sought only with the variation thus set up.

(*b*) A sues B to compel specific performance of a contract in writing to buy a dwelling-house. B proves that he assumed that the contract included an adjoining yard, and the contract was so framed as to leave it doubtful whether the yard was so included or not. The Court will refuse to enforce the contract, except with the variation set up by B.

(*c*) A contracts in writing to let to B a wharf, together with a strip of A's land delineated in a map. Before signing the contract, B proposed orally that he should be at liberty to substitute for the strip mentioned in the contract another strip of A's land of the same dimensions, and to this A expressly assented. B then signed the written contract. A cannot obtain specific performance of the written contract, except with the variation set up by B.

(*d*) A and B enter into negotiations for the purpose of securing land for B for his life, with remainder to his issue. They execute a contract, the terms of which are found to confer an absolute ownership on B. The contract so framed cannot be specifically enforced.

(*e*) A contracts in writing to let a house to B, for a certain term, at the rent of Rupees 100 per month, putting it first into tenantable repair. The house turns out to be not worth repairing, so, with B's consent, A pulls it down and erects a new house in its place: B contracting orally to pay rent at Rupees 120 per mensem. B then sues to enforce specific performance of the contract in writing. He cannot enforce it except with the variations made by the subsequent oral contract.

(*g*) *Against whom Contracts may be specifically enforced.*

Relief against parties and persons claiming under them by subsequent title.

27. Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against:—

(*a*) either party thereto;

(*b*) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;

(*c*) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;

(*d*) when a public company has entered into a contract and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation;

Section 27A.

(*e*) when the promoters of a public company have, before its incorporation, entered into a contract, the company, provided that the company has ratified and adopted the contract and the contract is warranted by the terms of the incorporation.

Illustrations.

to clause (*b*).—A contracts to convey certain land to B by a particular day. A dies intestate before that day without having conveyed the land. B may compel A's heir or other representative in interest to perform the contract specifically.

A contracts to sell certain land to B for Rupees 5,000. A afterwards conveys the land for Rupees 6,000 to C, who has notice of the original contract. B may enforce specific performance of the contract as against C.

A contracts to sell land to B for Rupees 5,000. B takes possession of the land. Afterwards A sells it to C for Rupees 6,000. C makes no inquiry of B relating to his interest in the land. B's possession is sufficient to affect C with notice of his interest, and he may enforce specific performance of the contract against C.

A contracts, in consideration of Rupees 1,000, to bequeath certain of his lands to B. Immediately after the contract, A dies intestate, and C takes out administration to his estate. B may enforce specific performance of the contract against C.

A contracts to sell certain land to B. Before the completion of the contract, A becomes a lunatic and C is appointed his committee. B may specifically enforce the contract against C.

to clause (*c*).—A, the tenant for life of an estate, with remainder to B, in due exercise of a power conferred by the settlement under which he is tenant for life, contracts to sell the estate to C, who has notice of the settlement. Before the sale is completed, A dies. C may enforce specific performance of the contract against B.

A and B are joint tenants of land, his undivided moiety of which either may alien in his lifetime, but which, subject to that right, devolves on the survivor. A contracts to sell his moiety to C and dies. C may enforce specific performance of the contract against B.

Specific performance in case of part performance of contract to lease.

[**27-A.** Subject to the provisions of this Chapter, where a contract to lease immoveable property is made in writing signed by the parties thereto or on their behalf, either party may, notwithstanding that the contract, though required to be registered, has not been registered, sue the other for specific performance of the contract if,—

(*a*) where specific performance is claimed by the lessor, he has delivered possession of the property to the lessee, in part performance of the contract; and

(*b*) where specific performance is claimed by the lessee, he has, in part performance of the contract, taken possession of the property, or, being already in possession,

Section 28.

continues in possession in part performance of the contract, and has done some act in furtherance of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.

This section applies to contracts to lease executed after the first day of January 1939.]

(*h*) *Against whom Contracts cannot be specifically enforced.*

What parties cannot be compelled to perform.

28. Specific performance of a contract cannot be enforced against a party thereto in any of the following cases:—

(*a*) if the consideration to be received by him is so grossly inadequate, with reference to the state of things existing at the date of the contract, as to be either by itself or coupled with other circumstances evidence of fraud or of undue advantage taken by the plaintiff;

(*b*) if his assent was obtained by the misrepresentation (whether wilful or innocent), concealment, circumvention, or unfair practices, of any party to whom performance would become due under the contract, or by any promise of such party which has not been substantially fulfilled;

(*c*) if his assent was given under the influence of mistake of fact, misapprehension or surprise: Provided that, when the contract provides for compensation in case of mistake, compensation may be made for a mistake within the scope of such provision, and the contract may be specifically enforced in other respects if proper to be so enforced.

Illustrations.

to clause (*c*)—A, one of two executors, in the erroneous belief that he had the authority of his co-executor, enters into an agreement for the sale to B of his testator's property. B cannot insist on the sale being completed.

A directs an auctioneer to sell certain land. A afterwards revokes the auctioneer's authority as to 20 bighas of this land, but the auctioneer inadvertently sells the whole to B, who has not notice of the revocation. B cannot enforce specific performances of the agreement.

[ ] Inserted by Section 2 of Act XVII of 1939.

Sections 29-31.

(i) The effect of dismissing a Suit for Specific Performance.

Bar of suit for breach after dismissal.

29. The dismissal of a suit for specific performance of a contract or part thereof shall bar the plaintiff's right to sue for compensation for the breach of such contract or part, as the case may be.

(j) Awards and Directions to execute Settlements.

Application of preceding sections to award and testamentary directions to execute settlements.

30. The provisions of this chapter as to contracts shall, *mutatis mutandis*, apply to awards and to directions in a will or codicil to execute a particular settlement.

CHAPTER III.

OF THE RECTIFICATION OF INSTRUMENTS.

When instrument may be rectified.

31. When, through fraud or a mutual mistake of the parties, a contract or other instrument in writing does not truly express their intention, either party, or his representative in interest, may institute a suit to have the instrument rectified; and if the Court find it clearly proved that there has been fraud or mistake in framing the instrument, and ascertain the real intention of the parties in executing the same, the Court may in its discretion rectify the instrument so as to express that intention, so far as this can be done without prejudice to rights acquired by third persons, in good faith and for value.

Illustrations.

(*a*) A, intending to sell to B his house and one of three godowns adjacent to it, executes a conveyance prepared by B, in which, through B's fraud, all three godowns are included. Of the two godowns which were fraudulently included, B gives one to C and lets the other to D for a rent, neither C nor D having any knowledge of the fraud. The conveyance may, as against B and C, be rectified so as to exclude from it the godown given to C; but it cannot be rectified so as to affect D's lease.

(*b*) By a marriage settlement, A, the father of B, the intended wife, covenants with C, the intended husband, to pay to C, his executors, administrators and assigns, during A's life, an annuity of Rupees 5,000. C dies insolvent and the official assignee claims the annuity from A. The Court, on finding it clearly proved that the

parties always intended that this annuity should be paid as a provision for B and her children, may rectify the settlement and decree that the assignee has no right to any part of the annuity.

Presumption as to intent of parties.

32. For the purpose of rectifying a contract in writing, the Court must be satisfied that all the parties thereto intended to make an equitable and conscientious agreement.

Principles of rectification.

33. In rectifying a written instrument, the Court may inquire what the instrument was intended to mean, and what were intended to be its legal consequences, and is not confined to the enquiry what the language of the instrument was intended to be.

Specific enforcement of rectified contract.

34. A contract in writing may be first rectified and then, if the plaintiff has so prayed in his plaint and the Court thinks fit, specifically enforced.

Illustration.

A contracts in writing to pay his attorney, B, a fixed sum in lieu of costs. The contract contains mistakes as to the name and rights of the client, which, if construed strictly, would exclude B from all rights under it. B is entitled, if the Court thinks fit, to have it rectified, and to an order for payment of the sum, as if at the time of its execution it had expressed the intention of the parties.

CHAPTER IV.

OF THE RESCISSION OF CONTRACTS.

When rescission may be adjudged.

35. Any person interested in a contract in writing may sue to have it rescinded, and such rescission may be adjudged by the Court in any of the following cases, namely :—

(*a*) where the contract is voidable or terminable by the plaintiff ;

(*b*) where the contract is unlawful for causes not apparent on its face, and the defendant is more to blame than the plaintiff ;

(*c*) where a decree for specific performance of a contract of sale, or of a contract to take a lease, has been made, and the purchaser or lessee makes default in payment of the purchase-money or other sums which the Court has ordered him to pay.

Sections 36—38.

When the purchaser or lessee is in possession of the subject—matter, and the Court finds that such possession is wrongful, the Court may also order him to pay to the vendor or lessor the rents and profits, if any, received by him as such possessor.

In the same case, the Court may, by order in the suit in which the decree has been made and not complied with, rescind the contract, either so far as regards the party in default, or altogether, as the justice of the case may require.

Illustrations.

to (*a*)—A sells a field to B. There is a right of way over the field of which A has direct personal knowledge, but which he conceals from B. B is entitled to have the contract rescinded.

to (*b*)—A, an attorney, induces his client B, a Hindu widow, to transfer property to him for the purpose of defrauding B's creditors. Here the parties are not equally in fault, and B is entitled to have the instrument of transfer rescinded.

Remission for mistake.

36. Rescission of a contract in writing cannot be adjudged for mere mistake, unless the party against whom it is adjudged can be restored to substantially the same position as if the contract had not been made.

Alternative prayer for rescission in suit for specific performance.

37. A plaintiff instituting a suit for the specific performance of a contract in writing may pray in the alternative that, if the contract cannot be specifically enforced, it may be rescinded and delivered up to be cancelled; and the Court, if it refuses to enforce the contract specifically, may direct it to be rescinded and delivered up accordingly.

Court may require party rescinding to do equity.

38. On adjudging the rescission of a contract, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

CHAPTER V.

OF THE CANCELLATION OF INSTRUMENTS.

When cancellation may be ordered.

39. Any person against whom a written instrument is void or voidable, who has reasonable apprehension that such instrument, if left outstanding, may cause him

serious injury, may sue to have it adjudged void or voidable; and the Court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

If the instrument has been registered under the Indian Registration Act, the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.

Illustrations.

(*a*) A, the owner of a ship by fraudulently representing her to be seaworthy, induces B, an underwriter, to insure her. B may obtain the cancellation of the policy.

(*b*) A conveys land to B, who bequeaths it to C and dies. Thereupon D gets possession of the land and produces a forged instrument stating that the conveyance was made to B in trust for him. C may obtain the cancellation of the forged instrument.

(*c*) A, representing that the tenants on his land were all at will, sells it to B, and conveys it to him by an instrument, dated the 1st January 1877. Soon after that day, A fraudulently grants to C a lease of part of the lands, dated the 1st October 1876, and procures the lease to be registered under the Indian Registration Act. B may obtain the cancellation of this lease.

(*d*) A agrees to sell and deliver a ship to B, to be paid for by B's acceptances of four bills of exchange, for sums amounting to Rupees 30,000, to be drawn by A on B. The bills are drawn and accepted, but the ship is not delivered, according to the agreement. A sues B on one of the bills. B may obtain the cancellation of all the bills.

What instruments may be partially cancelled.

40. Where an instrument is evidence of different rights, or different obligations, the Court may, in a proper case, cancel it in part and allow it to stand for the residue.

Illustration.

A draws a bill on B, who endorses it to C, by whom it appears to be endorsed to D, who endorses it to E. C's endorsement is forged. C is entitled to have such endorsement cancelled, leaving the bill to stand in other respects.

Power to require party for whom instrument is cancelled to make compensation.

41. On adjudging the cancellation of an instrument, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

Section 42.

CHAPTER VI.

OF DECLARATORY DECREES.

Discretion of Court as to declarations of status or right.

42. Any person entitled to any legal character, or to any rights as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled and the plaintiff need not in such suit ask for any further relief:

Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

EXPLANATION.—A trustee of property is a 'person interested to deny' a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.

Illustrations.

(*a*) A is lawfully in possession of certain land. The inhabitants of a neighbouring village claim a right of way across the land. A may sue for a declaration that they are not entitled to the right so claimed.

(*b*) A bequeaths his property to B, C and D, 'to be equally divided amongst all and each of them, if living at the time of my death, then amongst their surviving children.' No such children are in existence. In a suit against A's executor, the Court may declare whether B, C and D took the property absolutely, or only for their lives, and it may also declare the interests of the children before their rights are vested.

(*c*) A covenants that, if he should at any time be entitled to property exceeding one lakh of rupees, he will settle it upon certain trusts. Before any such property accrues, or any persons entitled under the trusts are ascertained, he institutes a suit to obtain a declaration that the covenant is void for uncertainty. The Court may make the declaration.

(*d*) A alienates to B property in which A has merely a life interest. The alienation is invalid as against C, who is entitled as reversioner. The Court may in a suit by C against A and B declare that C is so entitled.

(*e*) The widow of a sonless Hindu alienates part of the property of which she is in possession as such. The person presumptively entitled to possess the property if he survive her may, in a suit against the alienee, obtain a declaration that the alienation was made without legal necessity and was therefore void beyond the widow's lifetime.

(*f*) A Hindu widow in possession of property adopts a son to her deceased husband. The person presumptively entitled to possession of the property on her death without a son may, in a suit against the adopted son, obtain a declaration that the adoption was invalid.

Sections 43—52.

(*g*) A is in possession of certain property. B, alleging that he is the owner of the property, requires A to deliver it to him. A may obtain a declaration of his right to hold the property.

(*h*) A bequeaths property to B for his life, with remainder to B's wife and her children, if any, by B, but if B die without any wife or children, to C. B has a putative wife, D, and children, but C denies that B and D were ever lawfully married. D and her children may, in B's lifetime, institute a suit against C and obtain therein a declaration that they are truly the wife and children of B.

Effect of declaration.

43. A declaration made under this Chapter is binding only on the parties to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees.

Illustration.

A, a Hindu, in a suit to which B, his alleged wife, and her mother are defendants, seeks a declaration that his marriage was duly solemnized and an order for the restitution of his conjugal right. The Court makes the declaration and order. C, claiming that B is his wife, then sues A for the recovery of B. The declaration made in the former suit is not binding upon C.

CHAPTER VII.

OF THE APPOINTMENT OF RECEIVERS.

Appointment of receivers discretionary.

44. The appointment of a Receiver pending a suit is a matter resting in the discretion of the Court.

Reference to Code of Civil Procedure.

The mode and effect of his appointment, and his rights, powers, duties and liabilities, are regulated by the Code of Civil Procedure.

[CHAPTER VIII.—*Of the enforcement of Public Duties.*

Omitted as directed by Notification No. 47 J., dated the 27th May 1878].

PART I.

OF PREVENTIVE RELIEF.

CHAPTER IX.

OF INJUNCTIONS GENERALLY.

Preventive relief how granted.

52. Preventive relief is granted at the discretion of the Court by injunction, temporary or perpetual.

Sections 53--54.

Temporary injunctions.

53. Temporary injunctions are such as are to continue until a specific time, or until the further order of the Court.

They may be granted at any period of a suit, and are regulated by the Code of Civil Procedure.

Perpetual injunctions.

A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit: the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.

CHAPTER X.

OF PERPETUAL INJUNCTIONS.

Perpetual injunctions when granted.

54. Subject to the other provisions contained in, or referred to by, this Chapter, a perpetual injunction may be granted to prevent the breach of an obligation existing in favour of the applicant, whether expressly or by implication.

When such obligation arises from contract, the Court shall be guided by the rules and provisions contained in Chapter II of this Act.

When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the Court may grant a perpetual injunction in the following cases (namely):—

(*a*) where the defendant is trustee of the property for the plaintiff;

(*b*) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;

(*c*) where the invasion is such that pecuniary compensation would not afford adequate relief;

(*d*) where it is probable that pecuniary compensation cannot be got for the invasion;

(*e*) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

EXPLANATION.—For the purpose of this section a trademark is property.

Illustrations.

(*a*) A lets certain lands to B, and contracts not to dig sand or gravel thereout. A may sue for an injunction to restrain B from digging in violation of his contract.

Section 54.

(*b*) A trustee threatens a breach of trust. His co-trustees, if any, should, and the beneficial owners may, sue for an injunction to prevent the breach.

(*c*) The directors of a public company are about to pay a dividend out of capital or borrowed money. Any of the shareholders may sue for an injunction to restrain them.

(*d*) The directors of a fire and life-insurance company are about o engage in marine insurances. Any of the shareholders may sue for an injunction to restrain them.

(*e*) A, an executor, through misconduct or insolvency, is bringing the property of the deceased into danger. The Court may grant an injunction to restrain him from getting in the assets.

(*f*) A, a trustee for B, is about to make an imprudent sale of a small part of the trust-property. B may sue for an injunction to restrain the sale, even though compensation in money would have afforded him adequate relief.

(*g*) A makes a settlement (not founded on marriage or other valuable consideration) of an estate on B and his children. A then contracts to sell the estate to C. B or any of his children may sue for an injunction to restrain the sale.

(*h*) In the course of A's employment as a vakil, certain papers belonging to his client, B, come into his possession. A threatens to make these papers public, or to communicate their contents to a stranger. B may sue for an injunction to restrain A from so doing.

(*i*) A is B's medical adviser. He demands money of B which B declines to pay. A then threatens to make known the effect of B's communications to him as a patient. This is contrary to A's duty, and B may sue for an injunction to restrain him from so doing.

(*j*) A, the owner of two adjoining houses, lets one to B and afterwards lets the other to C. A and C begin to make such alterations in the house let to C as will prevent the comfortable enjoyment of the house let to B. B may sue for an injunction to restrain them from so doing.

(*k*) A lets certain arable lands to B for purposes of husbandry, but without any express contract as to the mode of cultivation. Contrary to the mode of cultivation customary in the district, B threatens to sow the lands with seed injurious thereto and requiring many years to eradicate. A may sue for an injunction to restrain B from sowing the lands in contravention of his implied contract to use them in a husbandlike manner.

(*l*) A, B and C are partners, the partnership being determinable at will. A threatens to do an act tending to the destruction of the partnership—property. B and C may, without seeking a dissolution of the partnership sue for an injunction to restrain A from doing the act.

(*m*) A, a Hindu widow in possession of her deceased husband's property, commits destruction of the property without any cause sufficient to justify her in so doing. The heir-expectant may sue for an injunction to restrain her.

(*n*) A, B and C are members of an undivided Hindu family. A cuts timber growing on the family-property, and threatens to destroy part of the family-house and to sell some of the family-utensils. B and C may sue for an injunction to restrain him.

Section 55.

(*o*) A, the owner of certain houses in Calcutta, becomes insolvent. B buys them from the Official Assignee and enters into possession. A persists in trespassing on and damaging the houses, and B is thereby compelled, at considerable expense, to employ men to protect the possession. B may sue for an injunction to restrain further acts of trespass.

(*p*) The inhabitants of a village claim a right of way over A's land. In a suit against several of them, A obtains a declaratory decree that his land is subject to no such right. Afterwards each of the other villagers sues A for obstructing his alleged right of way over the land. A may sue for an injunction to restrain them.

(*q*) A, in an administration-suit to which a creditor, B, is not a party, obtains a decree for the administration of C's assets. B proceeds against C's estate for his debt. A may sue for an injunction to restrain B.

(*r*) A and B are in possession of contiguous lands and of the mines underneath them. A works his mine so as to extend under B's mine and threatens to remove certain pillars which help to support B's mine. B may sue for an injunction to restrain him from so doing.

(*s*) A rings bells or makes some other unnecessary noise so near a house as to interfere materially and unreasonably with the physical comfort of the occupier, B. B may sue for an injunction restraining A from making the noise.

(*t*) A pollutes the air with smoke so as to interfere materially with the physical comfort of B and C, who carry on business in a neighbouring house. B and C may sue for an injunction to restrain the pollution.

(*u*) A infringes B's patent. If the Court is satisfied that the patent is valid and has been infringed, B may obtain an injunction to restrain the infringement.

(*v*) A pirates B's copyright. B may obtain an injunction to restrain the piracy, unless the work of which copyright is claimed is libellous or obscene.

(*w*) A improperly uses the trademark of B. B may obtain an injunction to restrain the user, provided that B's use of the trademark is honest.

(*x*) A, a tradesman, holds out B as his partner against the wish and without the authority of B. B may sue for an injunction to restrain A from so doing.

(*y*) A, a very eminent man, writes letters on family-topics to B. After the death of A and B, C, who is B's residuary legatee, proposes to make money by publishing A's letters. D, who is A's executor, has a property in the letters, and may sue for an injunction to restrain C from publishing them.

(*z*) A carries on a manufactory and B is his assistant. In the course of his business, A imparts to B a secret process of value. B afterwards demands money of A, threatening, in case of refusal, to disclose the process to C, a rival manufacturer. A may sue for an injunction to restrain B from disclosing the process.

Mandatory injunctions.

55. When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the Court is capable of enforcing, the Court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

Section 56.

Illustrations.

(*a*) A, by new buildings, obstructs lights to the access and use of which B has acquired a right under the Indian Limitation Act, Part IV. B may obtain an injunction, not only to restrain A from going on with the buildings, but also to pull down so much of them as obstructs B's lights.

(*b*) A builds a house with eaves projecting over B's land. B may sue for an injunction to pull down so much of the eaves as so project.

(*c*) In the case put as illustration (*i*) to section 54, the Court may also order all written communications made by B, as patient, to A, as medical adviser, to be destroyed.

(*d*) In the case put as illustration (*y*) to section 54, the Court may also order A's letters to be destroyed.

(*e*) A threatens to publish statements concerning B which would be punishable under Chapter XXI of the Indian Penal Code. The Court may grant an injunction to restrain the publication, even though it may be shown not to be injurious to B's property.

(*f*) A, being B's medical adviser, threatens to publish B's written communications with him, showing that B has led an immoral life. B may obtain an injunction to restrain the publication.

(*g*) In the cases put as illustrations (*v*) and (*w*) to section 54 and in illustrations (*e*) and (*f*) to this section, the Court may also order the copies produced by piracy, and the trademarks, statements and communications, therein respectively mentioned, to be given up or destroyed.

Injunction when refused.

56. An injunction cannot be granted:—

(*a*) to stay a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;

(*b*) to stay proceedings in a Court not subordinate to that from which the injunction is sought;

(*c*) to restrain persons from applying to any legislative body;

(*d*) to interfere with the public duties of any department of the Government of India or the Local Government or with the sovereign acts of a Foreign Government;

(*e*) to stay proceedings in any criminal matter;

(*f*) to prevent the breach of a contract the performance of which would not be specifically enforced;

(*g*) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;

(*h*) to prevent a continuing breach in which the applicant has acquiesced;

(*i*) when equally efficacious relief can certainly be obtained by any other usual mode of proceedings except in case of breach of trust;

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(*j*) when the conduct of the applicant or his agents has been such as to disentitle him to the assistance of the Court;

(*k*) where the applicant has no personal interest in the matter.

Illustrations.

(*a*) A seeks an injunction to restrain his partner, B, from receiving the partnership-debts and effects. It appears that A had improperly possessed himself of the books of the firm and refused B access to them. The Court will refuse the injunction.

(*b*) A manufactures and sells crucibles, designating them as "patent plumbago-crucibles," though, in fact, they have never been patented. B pirates the designation. A cannot obtain an injunction to restrain the piracy.

(*c*) A sells an article called "Mexican Balm," stating that it is compounded of divers rare essences, and has sovereign medicinal qualities. B commences to sell a similar article to which he gives a name and description such as to lead people into the belief that they are buying A's Mexican Balm. A sues B for an injunction to restrain the sale. B shows that A's Mexican Balm consists of nothing but scented hog's lard. A's use of his description is not an honest one and he cannot obtain an injunction.

Injunction to perform negative agreement.

57. Notwithstanding section 56, clause (*f*), where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstance that the Court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement: provided that the applicant has not failed to perform the contract so far as it is binding on him.

Illustrations.

(*a*) A contracts to sell to B for Rupees 1,000 the good-will of a certain business unconnected with business-premises, and further agrees not to carry on that business in Calcutta. B pays A the Rupees 1,000 but A carries on the business in Calcutta. The Court cannot compel A to send his customers to B, but B may obtain an injunction restraining A from carrying on the business in Calcutta.

(*b*) A contracts to sell to B the good-will of a business. A then sets up a similar business close by B's shop and solicits his old customers to deal with him. This is contrary to his implied contract, and B may obtain an injunction to restrain A from soliciting the customers, and from doing any act whereby their good-will may be withdrawn from B.

(*c*) A contracts with B to sing for twelve months at B's theatre and not to sing in public elsewhere. B cannot obtain specific performance of the contract to sing, but he is entitled to an injunction restraining A from singing at any other place of public entertainment.

Schedule.

(*d*) B contracts with A that he will serve him faithfully for twelve months as a clerk. A is not entitled to a decree for specific performance of this contract. But he is entitled to an injunction restraining B from serving a rival house as clerk.

(*e*) A contracts with B that, in consideration of Rupees 1,000 to be paid to him by B on a day fixed, he will not set up a certain business within a specified distance. B fails to pay the money. A cannot be restrained from carrying on the business within the specified distance.

SCHEDULE.

(*See Section* 2.)

ENACTMENTS REPEALED.

Number and year	Subject	Extent of Repeal
VIII of 1859 ...	Civil Procedure ...	Sections 15 and 192.
XIV of 1859 ...	Limitation	Section 15.
XXIII of 1861 ...	Civil Procedure ...	Section 26.
IX of 1872 ...	Contract	In Section 28, the second clause of Exception 1.

ACT No. I OF 1878.

Notification by the Government of India, Foreign Department, Revenue, No. 93 I. R., dated the 21st November 1879.

The Governor-General in Council is pleased to extend Act I of 1878 (The Opium Act, 1878) to Mysore, subject to the modifications hereinafter specified.

1. For the last two clauses of section 1, the following clause shall be substituted:—*And it shall come into force in Mysore on the first day of April 1880.*

2. Section 2 and the last paragraph of section 22 shall be omitted.

3. In section 3 in the definition of "Magistrate" the words "in the Presidency Towns, a Presidency Magistrate, and elsewhere" shall be omitted.

4. In section 12, in the third paragraph, the words "Collector of the District or," in sections 19 and 24 the words "Collector of the District" and in section 24 the word "Collector" and the words "Collector, Deputy Collector or other" shall be omitted.

*5. For the words "the Local Government" "any Local Government," "the same Local Government," "such Government" and "such Local Government" wherever they occur, and for the words "British India" in section 6, the words "the Chief Commissioner of Mysore" and "Mysore" respectively shall be substituted.

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* As to this, however, (except in so far as it relates to the substitution of "Mysore" for "British India"), see Notification of the Government of Mysore No. 153, dated the 2nd September 1881, according to which the expressions "the Government of India," "the Governor-General of India in Council," and "Local Government" occurring in any Act in force in Mysore, are to denote "the Government of His Highness the Maharaja of Mysore."

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ACT No. I OF 1878.

(RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL ON THE 9TH JANUARY 1878.)

An Act to amend the law relating to Opium.

WHEREAS it is expedient to amend the law relating to opium; It is hereby enacted as follows:— Preamble.

1. This Act may be called the Opium Act, 1878. Short-title.

[*a*] And it shall come into force in Mysore on the first day of April 1880. [*a*]

2. [*Repeal and amendment of enactments.*] *Omitted as directed by Notification No.* 93 *I. R., dated the* 21*st November* 1879. Commencement.

3. In this Act, unless there be something repugnant in the subject or context,— Interpretation-clause.

"opium" includes also poppy-heads, preparations or admixtures of opium, and intoxicating drugs prepared from the poppy:

"Magistrate" means, [*b*] a Magistrate of the first class or (when specially empowered by the Local Government to try cases under this Act) a Magistrate of the second class:

"import" means to bring into the territories administered by any Local Government from sea, or from foreign territory, or from a territory administered by any other Local Government:

"export" means to take out of the territories administered by any Local Government to sea, or to any foreign territory, or to any territory administered by another Local Government:

"transport" means to remove from one place to another within the territories administered by the same Local Government.

[a-] This clause was substituted for the last two clauses of Section 1 by para 1 of Notification No. 93 1. R., dated the 21st November 1879.

[b] Certained words in Section 3 relating to Presidency towns have been omitted as directed by Notification No. 93, I. R., dated the 21st November 1879.

Sections 4—7.

Prohibition of poppy-cultivation and possession, etc., of opium.

4. Except as permitted by this Act, or by any other enactment relating to opium for the time being in force, or by rules framed under this Act or under any such enactment, no one shall—

(*a*) cultivate the poppy;
(*b*) manufacture opium;
(*c*) possess opium;
(*d*) transport opium;
(*e*) import or export opium; or
(*f*) sell opium.

Power to make rules to permit such matters.

5. The Local Government, with the previous sanction of the Governor-General in Council may, from time to time, by notification in the local Gazette, make rules consistent with this Act, to permit absolutely, or subject to the payment of duty or to any other conditions, and to regulate, within the whole or any specified part of the territories administered by such Government, all or any of the following matters:—

(*a*) the cultivation of the poppy;
(*b*) the manufacture of opium;
(*c*) the possession of opium;
(*d*) the transport of opium;
(*e*) the importation or exportation of opium; and
(*f*) the sale of opium, and the form of duties leviable on the sale of opium by retail:

Provided that no duty shall be levied under any such rule on any opium imported and on which a duty is imposed by or under the law relating to sea customs for the time being in force or under section 6.

Duty on opium imported by land.

6. The Governor-General in Council may, from time to time, by notification in the *Gazette of India*, impose such duty as he thinks fit on opium or on any kind of opium imported by land into [*a*] Mysore [*a*] or into any specified part thereof, and may alter or abolish any duty so imposed.

Warehousing opium.

7. The Governor-General in Council may, by order notified in the *Gazette of India*—

(*a*) authorize any Local Government to establish warehouses for opium legally imported into, or intended to be exported from, the territories administered by such Local Government, and

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[a] The word "Mysore" has been substituted for "British India" in Section 6 as directed by Notification No. 93—I.R., dated the 21st November 1879.

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(*b*) cancel any such order.

So long as such order remains in force, the Local Government may, by notification published in the official Gazette,—

(*c*) declare any place to be a warehouse for all or any opium legally imported, whether before or after the payment of any duty leviable thereon, into the territories administered by such Government, or into any specified part thereof, or intended to be exported thence, and

(*d*) cancel any such declaration.

An order under clause (*b*) shall cancel all previous declarations under clause (*c*) of this section relating to places in the territories to which such order refers.

So long as such declaration remains in force, the owner of all such opium shall be bound to deposit it in such warehouse.

Power to make rules relating to warehouses.

8. The Local Government, with the previous sanction of the Governor-General in Council, may, from time to time, by notification in the Local Gazette, make rules consistent with this Act to regulate the safe custody of opium warehoused under section 7; the levy of fees for such warehousing; the removal of such opium for sale or exportation; and the manner in which it shall be disposed of, if any duty or fees leviable on it be not paid within twelve months from the date of warehousing the same.

Penalty for illegal cultivation of poppy, etc.

9. Any person who, in contravention of this Act, or of rules made and notified under section 5 or section 8,—

(*a*) cultivates the poppy, or

(*b*) manufactures opium, or

(*c*) possesses opium, or

(*d*) transports opium, or

(*e*) imports or exports opium, or

(*f*) sells opium, or

(*g*) omits to warehouse opium, or removes or does any act in respect of warehoused opium,

and any person who otherwise contravenes any such rule,

shall, on conviction before a Magistrate, be punished for each such offence with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both;

and, where a fine is imposed, the convicting Magistrate shall direct the offender to be imprisoned in default of payment of the fine for a term which may extend to six months,

and such imprisonment shall be in excess of any other imprisonment to which he may have been sentenced.

Presumption in prosecutions under section 9.

10. In prosecutions under section 9, it shall be presumed until the contrary is proved, that all opium for which the accused person is unable to account satisfactorily is opium in respect of which he has committed an offence under this Act.

Confiscation of opium.

11. In any case in which an offence under section 9 has been committed :—

(*a*) the poppy so cultivated,

(*b*) the opium in respect of which any offence under the same section has been committed,

(*c*) where, in the case of an offence uuder clause (*d*) or (*e*) of the same section, the offender is transporting, importing or exporting any opium exceeding the quantity (if any) which he is permitted to transport, import or export as the case may be, the whole of the opium which he is transporting, importing or exporting,

(*d*) where, in the case of an offence under clause (*f*) of the same section, the offender has in his possession any opium other than the opium in respect of which the offence has been committed, the whole of such other opium,

shall be liable to confiscation.

The vessels, packages and coverings in which any opium liable to confiscation under this section is found, and the other contents (if any) of the vessel or package in which such opium may be concealed, and the animals and conveyances used in carrying it, shall likewise be liable to confiscation.

Order of confiscation by whom to be made.

12. When the offender is convicted, or when the person charged with an offence in respect of any opium is acquitted, but the Magistrate decides that the opium is liable to confiscation, such confiscation may be ordered by the Magistrate.

Whenever confiscation is authorized by this Act, the officer ordering it may give the owner of the thing liable to be confiscated an option to pay, in lieu of confiscation, such fine as the officer thinks fit.

When an offence against this Act has been committed, but the offender is not known or cannot befound, or when opium not in the possession of any personcannot be satisfactorily accounted for, the case shall be enquired into and

Sections 13—15.

determined by the [a] Deputy Commissioner, or by any other officer authorized by the Local Government in this behalf, either personally or in right of his office, who may order such confiscation: Provided that no such order shall be made until the expiration of one month from the date of seizing the things intended to be confiscated or without hearing the persons (if any) claiming any right thereto, and the evidence (if any) which they produce in support of their claims.

Power to make rules regarding dispsoal of things confiscated, and rewards.

13. The Local Government may, with the previous sanction of the Governor-General in Council, from time to time, by notification in the local Gazette, make rules consistent with this Act to regulate—

(*a*) the disposal of all things confiscated under this Act; and

(*b*) the rewards to be paid to officers and informers out of the proceeds of fines and confiscations under this Act.

Power to enter, arrest and seize on information that opium is unlawfully kept in any enclosed place.

14. Any officer of any of the departments of Excise, Police, Customs, Salt, Opium or Revenue superior in rank to a peon or constable, who may in right of his office be authorized by the Local Government in this behalf, and who has reason to believe, from personal knowledge or from information given by any person and taken down in writing, that opium liable to confiscation under this act is manufactured, kept or concealed in any building, vessel or enclosed place, may, between sunrise and sunset,—

(*a*) enter into any such building, vessel or place;

(*b*) in case of resistance, break open any door and remove any other obstacle to such entry;

(*c*) seize such opium and all materials used in the manufacture thereof, and any other thing which he has reason to believe to be liable to confiscation under section 11 or any other law for the time being in force relating to opium; and

(*d*) detain and search, and, if he think proper, arrest, any person whom he has reason to believe to be guilty of any offence relating to such opium under this or any other law for the time being in force.

Power to seize opium in open places.

15. Any officer of any of the said departments may—

(*a*) seize, in any open place or in transit, any opium or other thing which he has reason to believe to be liable

[a] Certain words in Section 12 have been omitted as directed by Notification No. 93—I. R., dated the 21st November 1879.

to confiscation under section 11 or any other law for the time being in force relating to opium ;

Power to detain, search and arrest.

(*b*) detain and search any person whom he has reason to believe to be guilty of any offence against this or any other such law, and, if such person has opium in his possession, arrest him and any other persons in his company.

Searches how made.

16. All searches under section 14 or section 15 shall be made in accordance with the provisions of the Code of Criminal Procedure, 1882 [*a*].

Officers to assist each other.

17. The officers of the several departments mentioned in section 14 shall, upon notice given or request made, be legally bound to assist each other in carrying out the provisions of this Act.

Vexatious entries, searches, seizures and arrests.

18. Any officer of any of the said departments who, without reasonable ground of suspicion, enters or searches, or causes to be entered or searched, any building, vessel or place,

or vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for any opium or other thing liable to confiscation under this Act,

or vexatiously and unnecessarily detains, searches or arrests any person,

shall, for every such offence, be punished with fine not exceeding five hundred rupees.

Issue of warrants.

19. The [*b*] Deputy Commissioner or other officer authorized by the Local Government in this behalf, either personally or in right of his office, or a Magistrate, may issue his warrant for the arrest of any person whom he has reason to believe to have committed an offence relating to opium, or for the search, whether by day or night, of any building or vessel or place in which he has reason to believe opium liable to confiscation to be kept or concealed.

All warrants issued under this section shall be executed in accordance with the provisions of the Code of Criminal Procedure, 1882 [*a*].

Disposal of person arrested or thing seized.

20. Every person arrested, and thing seized, under section 14 or section 15, shall be forwarded without delay to the officer in charge of the nearest police station ; and every person arrested and thing seized under section 19

[a] The reference to Act. X of 1872 has been altered in accordance with Act X of 1882, s. 3.

[b] Certain words in Section 19 have been omitted as directed by Notification No. 93—I. R., dated the 21st November 1879.

shall be forwarded without delay to the officer by whom the warrant was issued.

Every officer to whom any person or thing is forwarded under this section shall, with all convenient despatch, take such measures as may be necessary for the disposal according to law of such person or thing.

Report of arrests and seizures.

21. Whenever any officer makes any arrest or seizure under this Act, he shall, within forty-eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior.

Procedure in case of illegal poppy cultivation.

22. In the case of alleged illegal cultivation of the poppy, the crop shall not be removed, but shall, pending the disposal of the case, be attached by an officer superior in rank to a peon or constable, who may in right of his office be authorized by the Local Government in this behalf and such officer shall require the cultivator to give bail in a reasonable amount (to be fixed by such officer) for his appearance before the Magistrate by whom the case is to be disposed of, and such cultivator shall not be arrested unless within a reasonable time he fails to give such bail. [a]

Recovery of arrears of fees, duties, etc.

23. Any arrear of any fee or duty imposed under this Act or any rule made hereunder,

and any arrear due from any farmer of opium-revenue,

may be recovered from the person primarily liable to pay the same to the Government or from his surety (if any) as if it were an arrear of land-revenue.

Farmer may apply to Deputy Commissioner or other officer to recover amount due to him by licensee.

24. When any amount is due to a farmer of opium-revenue from his licensee, in respect of a license, such farmer may make an application to the [b] Deputy Commissioner or other officer authorized by the Local Government in this behalf, praying such officer to recover such amount on behalf of the applicant; and, on receiving such application, such [c] Deputy Commissioner or other officer may in his discretion recover such amount as if it were an arrear of land-revenue, and shall pay any amount so recovered to the applicant:

Provided that the execution of any process issued by such [d] officer for the recovery of such amount shall be stayed if the licensee institutes a suit in the Civil Court

[a] The last paragraph of Section 22 has been omitted as directed by Notification No. 93 I. R., dated the 21st November 1879.

[b] [c] [d] Certain words in Section 24 have been omitted as directed by Notification No. 93 I. R., dated the 21st November 1879.

Section 25.

to try the demand of the farmer, and furnishes security to the satisfaction of such officer for the payment of the amount which such Court may adjudge to be due from him to such farmer:

Provided also that nothing contained in this section or done thereunder shall affect the right of any farmer of opium-revenue to recover by suit in the Civil Court or otherwise any amount due to him from such licensee.

Recovery of penalties due under bond.

25. When any person, in compliance with any rule made hereunder, gives a bond for the performance of any duty or act, such duty or act shall be deemed to be public duty, or an act in which the public are interested, as the case may be, within the meaning of the Indian Contract Act, 1872, section 74; and, upon breach of the condition of such bond by him, the whole sum named therein as amount to be paid in case of such breach may be recovered from him as if it were an arrear of land-revenue.

SCHEDULE.

[*Enactment repealed.*]

Omitted along with section 2.

MADRAS ACT No. 1 OF 1873.

Notification by the Government of India, Foreign Department, Judicial No. 88 *J., dated Fort William, the* 22*nd May* 1874.

His Excellency the Viceroy and Governor-General in Council is pleased to extend to Mysore the provisions of Madras Act I of 1873 (an Act to prevent the indiscriminate destruction of Wild Elephants).

(RECEIVED THE ASSENT OF THE GOVERNOR ON THE 21ST APRIL 1873, AND OF THE GOVERNOR-GENERAL ON THE 15TH MAY 1873.)

An Act to prevent the indiscriminate destruction of Wild Elephants.

WHEREAS it is expedient to make provision to prevent the indiscriminate destruction of wild elephants within the Presidency of Madras; It is hereby enacted as follows:— Preamble.

1. This Act extends to the territories for the time being subject to the Government of the Presidency of Fort St. George; and it shall come into force on the first day of October 1873. Local extent.

2. From and after the said day, the destruction of wild elephants is prohibited, except as hereinafter provided. Commencement.

3. Whoever shoots at, or intentionally destroys, or abets, within the meaning of the Indian Penal Code, the shooting at, or destruction of, any wild female elephant upon waste or forest land, whether such land be the property of Government or otherwise, shall be liable to a penalty not exceeding five hundred rupees, and, in default of payment, to simple or rigorous imprisonment for a period not exceeding three months. Destruction of wild elephants prohibited. Penalty for destroying female elephants.

Any person convicted under this Act of an offence committed after his previous conviction under this Act, shall be liable to a penalty not exceeding one thousand rupees, and, in default of the payment, to simple or rigorous imprisonment for a period not exceeding six months.

Sections 4—9.

Penalty for destroying male elephant on Goverment land without license.

4. Whoever, not being authorized thereto by a license granted under the provisions of section 7, shoots at, or intentionally destroys, or abets, within the meaning of the Indian Penal Code, the shooting at, or destruction of, any wild male elephant upon waste or forest land, the property of the Government, shall, upon a first or second conviction, be liable to the penalties and periods of imprisonment respectively provided for a first or second conviction in section 3 of this Act.

Saving clause as to destruction of male elephants on zemindary or private land.

5. Nothing in this Act shall be deemed to prevent any zemindar or other proprietor or occupier of land, or any person duly authorized in that behalf by any such zemindar, proprietor, or occupier, from destroying wild male elephants upon the waste or forest lands of such zemindar, proprietor or occupier.

Saving clause as to destruction of elephants on cultivated lands, etc.

6. Nothing in this Act shall be deemed to prevent any person from shooting at, or destroying any wild male or female elephant found upon cultivated lands, or upon or in the immediate vicinity of any public road, or to prevent any person from shooting at or destroying any male or female elephant in defence of himself or any other person.

License to shoot male elephants.

7. The Collector or other officer in charge of a district may, subject to such rules as may, from time to time, be made by the Local Government, issue a license to any person authorizing him by name to shoot wild male elephants upon waste or forest lands, the property of the Government, in such district, for the period of one year from the date of the grant of such license.

Every such license shall become void at the expiration of the said period, but may be renewed by such Collector or other officer for a like period.

Proviso.

Provided that every such license shall become void upon the conviction under this Act of the person to whom such license was granted.

Power to make rules for grant or renewal of licenses.

8. The Local Government may make rules for regulating the grant or renewal of licenses under this Act, and the fees to be charged on such grant or renewal, and may, from time to time, alter or cancel such rules.

Limitation of prosecution.

9. Every prosecution under this Act shall be commenced within a period of six months from the date of the offence in respect of which it is instituted.

MADRAS ACT VIII OF 1878.

Notification by the Government of India, Foreign Department, Judicial, No. 130 *I. J., dated Simla, the* 19*th June* 1879.

The Governor-General in Council is pleased to extend the Madras Act No. VIII, 1878, (The Madras Coffee Stealing Prevention Act, 1878) to the Province of Mysore, subject to the following modifications, namely :—

In section 1, for the word "Madras" the word "Mysore," and in section 2, for the words "Governor in Council," the words "Governor-General in Council,"* shall be substituted.

(RECEIVED THE GOVERNOR'S ASSENT ON THE 30TH AUGUST 1878 AND THE GOVERNOR-GENERAL'S ASSENT ON THE 28TH SEPTEMBER 1878.)

An Act to prevent Thefts of Coffee.

Preamble.

WHEREAS it is expedient to make special provision to prevent thefts of coffee, and to repress and punish the offence of receiving or disposing of stolen coffee in the neighbourhood of coffee plantations or estates; It is enacted as follows :—

Short-title.

1. This Act may be called "The [*a*] Mysore [*a*] Coffee-Stealing Prevention Act, 1878."

Commencement and local extent of Act.

2. † This Act shall take effect in such districts, divisions or parts of districts, or within such localities or limits within [*a*] the Presidency of Fort St. George, [*a*] and from such date as the [*a*] Governor-General in Council

*Under Notification of the Government of Mysore, No. 153, dated the 2nd September 1881, the substituted expression "Governor-General in Council" will denote the Government of His Highness the Maharaja of Mysore.

[a-a] This word "Mysore" was substituted for "Madras" by Notification No. 130 I. J., dated the 19th June 1879.

†Under this section it was directed that the Act should take effect in the parts of the districts mentioned below namely :—

Mysore District.—The taluks of Chamarajnagar, Gundlupet, Periyapatna, Heggaddevankote.

Hassan District—The taluks of Arkalgud, Hole-Narsipur, Manjarabad, Belur, Hassan.

Kadur District.—The taluks of Mudgere, Koppa, Lakvalli, Tarikere, Chikmagalur.

Shimoga District.—The taluks of Kavaledurga and Nagar.

Vide Notification by the Government of India, No. 242 I. J., dated the 3rd September 1879.

[a-a] The introducing Notification should have provided for these words being replaced by the words "the territories of Mysore."

[*a*] may from time to time direct by notification published in the official Gazette.

Power to modify or annul notification.

The [*a*] Governor-General in Council [*a*] may from time to time modify or cancel such direction by notification, similarly published.

Interpretation.

3. In this Act,—

Laborer.

"Laborer" means and includes all persons (except resident managers) temporarily or permanently employed on a coffee-estate in any capacity, whether agricultural, menial or otherwise howsoever.

Carrier.

"Carrier" means and includes all persons for the time being employed in the transport of coffee, whether by porterage, packanimals, boat, cart or otherwise, and whether as contractors, drivers or otherwise.

Coffee-estate.

"Coffee-estate" means and includes any land on which coffee is growing.

Coffee.

"Coffee" means and includes all coffee not roasted or otherwise prepared for immediate consumption.

Coffee not to be taken from laborers.

4. It shall not be lawful for any one to purchase, take in barter or exchange, or receive coffee from any laborer employed on a coffee-estate.

Coffee not to be taken from other than laborer, unless particulars entered in book.

5. It shall not be lawful for any one to purchase, take in barter or exchange, or receive coffee from any person other than a laborer employed on a coffee-estate, unless the person so purchasing, taking in barter or exchange, or receiving such coffee shall immediately thereupon enter or cause to be entered in a book to be kept by him for that purpose a true record of such transaction, specifying:—

(*a*) the name, residence and occupation of the person from whom such coffee was so purchased, taken in barter or exchange, or received;

(*b*) the date of the transaction; and

(*c*) the quantity and description of the coffee so purchased, taken in barter or exchange, or received:

Sanction not to apply to coffee taken for *bona fide* personal consumption.

Provided that this section shall not apply to coffee purchased, taken in barter or exchange, or received from any person other than a laborer employed on a coffee-estate, and intended *bona fide* for consumption in the house or on the premises of the person purchasing, taking in a barter or exchange, or receiving the same as aforesaid.

[a-a] These words were substituted for the words "Governor in Council" by Notification No. 180, I. J., dated the 19th June 1879.

Sections 6—10.

Books to be produced on police officer's requisition.

6. All books required by section 5 to be kept by persons purchasing coffee shall be produced upon the requisition of any police officer not below the rank of an officer in charge of a police station, generally or specially authorized by any Magistrate to require the production of such books.

Conditions under which coffee may be taken from a carrier.

7. It shall not be lawful for any one to purchase or take in barter or exchange coffee from any carrier, or for any carrier to sell or give in barter or exchange any coffee, unless the person so purchasing or taking in barter or exchange such coffee shall, besides making the entry required by section 5 of this Act, also enter or cause to be entered in the book mentioned in the said section 5 the marks (if any) on the bags or other packages in which such coffee may be contained, and unless the entries required by this section and by the said section 5 be also correctly signed by such carrier in his own name, and attested by a police-officer or the headman of the village within which the transaction takes place; for which attestation no fee shall be chargeable.

Penalty for breach of section 4, 5, 6 or 7.

8. Any person committing any breach of the provisions contained in section 4, 5, 6 or 7 of this Act shall be liable, on conviction by a Magistrate, to pay a fine not exceeding five hundred rupees.

Penalty in case of laborer being found in possession of green coffee for which he cannot account.

9. Any cooly, maistry or other laborer employed on a coffee estate found with green gathered coffee in his possession, and failing to account satisfactorily for such possession, shall be liable, on conviction by a Magistrate, to pay a fine not exceeding five hundred rupees.

Coffee not to be carried without permission of owner or agent.

10. No person shall carry or remove coffee from any coffee estate, premises or place, or upon any road, highway or footway, without the express permission of the owner or of his authorized agent.

Permission to be in writing, etc.

Such permission shall be in writing, dated and signed by the said owner or his authorized agent, and shall contain the following particulars:—

(*a*) the quantity of the coffee to be carried or removed;

(*b*) the number, description and marks of the packages in which coffee is secured;

(*c*) the place or destination to which the coffee is to be carried or removed; and

(*d*) the names of the consigner and consignee.

Sections 11—14.

Penalty for breach of this section.

Any person committing any breach of the provisions of this section shall, on conviction by a Magistrate, be liable to pay a fine not exceeding five hundred rupees.

Hours of gathering or removing coffee.

11. No coffee shall be gathered, moved, loaded or unloaded on any coffee-estate between sunset and sunrise.

Penalty for breach of above provision.

Any person committing a breach of this provision, or abetting (within the meaning of the Indian Penal Code) such breach, shall, on conviction by a Magistrate, be liable to pay a fine not exceeding five hundred rupees;

Section 10 and this section not to apply to ordinary operations of curing.

Provided that nothing in section 10 or in this section shall apply to the ordinary operations of curing the crop on the estate, such as pulping or storing.

Procedure if gathering, etc., was done to commit theft.

12. If it shall appear that such gathering, moving, loading or unloading was for the purpose of committing a theft, the person or persons so engaged shall be liable to be charged with theft, or abetment of theft, and be proceeded against for such offence under the provisions of sections 378 and 379 or sections 107, 108 and 109 of the Indian Penal Code, as the case may be.

Substituted or additional punishment for second offence under section 9.

13. It shall be at the discretion of the Magistrate, in the case of any persons, not being females, who shall be convicted of a second offence under section 9 of this Act, to substitute or add corporal punishment under the provisions of Act No. VI of 1864 (*An Act to authorize the punishment of whipping in certain cases*), or of any other law for the time being in force in that behalf for or to the penalties provided by this Act:

Proviso.

Provided that such substituted or additional punishment shall be awarded only in respect of the offence itself, and not as an alternative penalty for non-payment of fine.

Fines to be paid into public treasury.

14. All fines paid or levied under this Act shall be paid into the public treasury:

Magistrate may grant rewards to informers.

Provided that the Magistrate trying any case under this Act may grant the whole or any portion of any fine levied therein as rewards to persons furnishing such information as may have led to the conviction of offenders under this Act.

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